



Office of  
the Schools  
Adjudicator

### **DETERMINATION**

**Case reference:** ADA3332

**Objector:** North East Law Centre

**Admission Authority:** The Academy Trust for St Cuthbert's Catholic High School, Newcastle upon Tyne

**Date of decision:** 12 September 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 governing body on behalf of the Academy Trust for St Cuthbert's Catholic High School, Newcastle upon Tyne.**

**I have also considered the arrangements in accordance with section 88I(5) and find one other matter which does 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. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by North East Law Centre (the objector), about the admission arrangements for September 2018 (the arrangements) for St Cuthbert's Catholic High School (the school), an all-ability academy school for boys aged 11 to 18 in Newcastle upon Tyne. The objection relates to the definition of the term "Catholic", the naming and number of feeder schools, and when the arrangements were determined.
2. The local authority for the area in which the school is located is Newcastle City Council. The local authority, the school's academy trust and its governing body, and the objector are parties to this objection. The Roman Catholic Diocese of Hexham and Newcastle (the diocese) is also a party to the objection by virtue of its role as 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 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, which is the admission authority for the school, on that basis. The objector submitted its objections to the arrangements on 15 May 2017.
4. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act, and that the concerns regarding the naming and number of feeder schools and to the definition of the term “Catholic” are within my jurisdiction.
5. The objector also expressed concern about the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down. The role of an adjudicator is to consider whether or not determined admission arrangements comply with the School Admissions Code (the Code) and the law relating to admissions. It does not, however, extend to the application of those admission arrangements to individual children in the process of applying for school places. I do not have jurisdiction, therefore, to consider the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down, nor any aspect of the appeal process.

## **Procedure**

6. In considering this matter I have had regard to all relevant legislation and the Code.
7. The documents I have considered in reaching my decision include:
  - a. the objector’s form of objection dated 15 May 2017, and subsequent correspondence;
  - b. the school’s response to the objection dated 7 June 2017, subsequent correspondence and supporting documents including copies of the minutes of meetings of the governing body and its committees;
  - c. the response to the objection from the diocese dated 6 June 2017, and supporting documents;
  - d. the local authority’s response to the objection on 8 June 2017, and supporting documents;
  - e. a map of the local area identifying relevant schools;
  - f. the determined arrangements published on the school’s website; and
  - g. the school’s funding agreement.

## **The Objection**

8. The objector questioned when the arrangements had been determined as the

final page of the school's 2018 admission policy is dated 5 February 2016.

9. The objector said that the "*definition of Catholic*" found in "*footnote 2(a)*" to the arrangements *appears to give wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic for the purposes of the admission policy...*" contrary to paragraphs 14 and 1.37 of the Code.
10. The objector also expressed several concerns about the feeder schools named in the arrangements:
  - i. The "*overuse*" of feeder schools as the inclusion of 13 named feeder schools in the arrangements "*unfairly disadvantages children who have not attended any of the named feeder schools for one reason or another.*" The objector said this was a breach of paragraphs 14 and 1.15 of the Code.
  - ii. The lack of fairness in naming two particular feeder schools situated in Gosforth.

### **Other Matter**

11. When I considered the arrangements as a whole there was one other matter which appeared to me not to meet certain requirements relating to admissions. The arrangements may be in breach of the Code at paragraph 2.14 regarding the deadline by which any waiting list must be maintained.

### **Background**

12. The school is an all-ability school for boys aged 11 to 18 which was founded in Newcastle upon Tyne by the Catholic Church to provide education for the children of Catholic families. The school converted to academy status on 1 March 2012 and the published admission number (PAN) is 200.
13. The arrangements make clear that if there are more applications than the 200 places available, then after the admission of any boys with an education, health and care plan or statement of special educational needs which names the school, the remaining places will be allocated according to the oversubscription criteria which I have summarised below:
  - A. Catholic looked after or previously looked after boys;
  - B. Catholic boys who attend a Catholic feeder primary school;
  - C. Other Catholic boys;
  - D. Other looked after or previously looked after boys;
  - E. The sons of members of staff who have been employed at the school for two or more years at the time of application;
  - F. Boys of other Christian denominations who attend a Catholic feeder primary school;
  - G. Boys of other Christian denominations;

- H. Other boys who attend a Catholic feeder primary school;
- I. Other boys.

Where there are places for some, but not all, applicants within a particular criterion, the tie breaker will be determined by shortest distance. Distance will be measured “*in a straight line from a single fixed central point at the school to a point in the centre of the home address of the child, using the Local Land and Property Gazetteer and British National Grid Easting and Northing co-ordinates.*” If the distances between two or more boy’s homes and the school is the same for the last remaining place, it will be offered to the older boy.

14. The school provided details about how the 200 Year 7 places for admissions in September 2017 were allocated, as shown in the table below:

Oversubscription criteria	A	B	C	D	E	F	G	H	I
Places allocated for September 2017	0	93	15	1	0	20	24	32	15

It can be seen from this table that for admissions in September 2017, just over half of the places available were allocated to Catholic children.

15. The local authority confirmed that the school is oversubscribed with “*397 on time applications for transfer into year 7 in September 2017 of which 253 named the school as first preference.*”
16. The objector is the North East Law Centre, a charitable organisation providing legal advice and related services to low income families in Newcastle and beyond.

### Consideration of Case

17. I will deal first with the objector’s concern about the determination of the arrangements.
18. The objector had reviewed the admission policy for 2018 published on the school’s website and noticed the statement on the final page that the policy had been “*Approved by the Board of Directors: Date: 5 February 2016.*” The objector questioned whether this statement was “*correct*” because paragraph 15(b) of the Code requires the “*admission authority to determine its admission arrangements each year.*”
19. I note that further detail about the requirements for determination each year is provided in paragraph 1.46 of the Code which states that “*all admission authorities **must** determine (i.e. formally agree) admission arrangements every year, even if they have not changed from previous years and a consultation has not been required. Admission authorities **must** determine admission arrangements for entry in September 2016 by 15 April 2015 and for all subsequent years, by 28 February in the determination year.*” If no changes to the arrangements were proposed and, therefore, no public consultation was required, then in order to comply with the Code, the 2018 arrangements must have been determined in the period 1 September 2016 to 28 February 2017.

20. The objector explained in the letter of 5 July 2017 that *“it appears that the board of directors determined the admission policy for 2017/18 on 5 February 2016, as one might expect. However, it also appears that the board of directors decided to determine the admission policy for 2018/19 on the same date, a whole year in advance. Is that correct? If so, can it be reasonably said that the admission arrangements are determined annually?”*
21. The objector said *“this may seem like a minor technical point. However... when an admission authority determined its admission arrangements, it should properly consider any issues or representations it may have dealt with in the previous school year to ensure they remain reasonable and fair. It is not possible to do this if an admission authority determines its admission arrangements a whole year in advance.”*
22. In the letter of 11 July 2017, the chair of governors attached *“a copy of the minutes of the Admissions Committee of Governors held on 5 February 2016 at which the Admissions Policy for 2017/18 was discussed and agreed.”* However, this evidence related to the arrangements for the previous admission year. The school was unable to produce a copy of the minutes of the full governing body at which the 2018 arrangements had been determined.
23. In an email of 14 July, the school provided assurance that the Student Wellbeing Committee had discussed the admissions policy for 2018/19 *“and as there were no changes it was agreed that the 2017/18 policy would stand for the 2018/19 academic year.”* The school then provided a copy of the minutes of a meeting held on 10 November 2016 of the Student Wellbeing Committee which notes that *“the admissions policy for 2018/19 was agreed.”*
24. In response to my request for a copy of the school’s scheme of delegation to evidence that the Student Wellbeing Committee had the appropriate delegated power to determine the admission arrangements, the school provided instead a copy of the terms of reference for that committee, dated 14 April 2014, which states that *“the committee will comprise of at least four directors and the headteacher”* and that it *“has delegated power to make its own decisions”* with respect to admissions *“on behalf of the governing body.”* I note from the published review date, that the terms of reference should have been reviewed in September 2014.
25. Although the review date on the 2018 admissions policy published on the school’s website does not match the date when the policy was actually reviewed, I accept the school’s assurance that the arrangements have been determined. It is disappointing that the school has been unable to produce a copy of the minutes of the full governing body which record that the 2018 arrangements had been determined, as the time-consuming search for relevant evidence might have been avoided. Nevertheless, the school has been able to evidence that the arrangements were determined as required by paragraph 15(b) of the Code. I do not uphold this part of the objection.

#### The definition of Catholic

26. The objector suggested that the definition of Catholic at *“footnote 2(a) appears*

*to give wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic for the purposes of the admission policy... contrary to the requirement at paragraph 14 of the Code that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”* The objector also considered that the definition may also be not comply with paragraph 1.37 *“that parents must easily be able understand how any faith-based criteria will be reasonably satisfied.”*

27. The definition of Catholic at note 2(a) is *“a member of a Church in full communion with the See of Rome. This includes the Eastern Catholic Churches. This will be evidenced by a certificate of baptism in a Catholic Church or a certificate of reception into the full communion of the Catholic Church. Those who have difficulty obtaining written evidence of baptism or reception should contact their parish priest who, after consulting with the Diocese, will decide how the question of baptism or reception is to be resolved and how written evidence is to be produced in accordance with the law of the Church.”*
28. The definition of Catholic provided in the arrangements states clearly that the evidence required is *“a certificate of baptism in a Catholic Church or a certificate of reception into the full communion of the Catholic Church”* which does not require the parish priest to apply any discretion, and I regard this as the general case. It seems clear to me that, in the general case, the parish priest is not required to apply any discretion whatsoever.
29. Nonetheless, I note that the latter part of the definition of Catholic states that *“those who have difficulty obtaining written evidence of baptism or reception should contact their parish priest who, after consulting with the Diocese, will decide how the question of baptism or reception is to be resolved and how written evidence is to be produced in accordance with the law of the Church.”* It may be that it is this last part of the definition that the objector considers affords *“wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic.”* However, my interpretation of the last part of the definition is that it applies only when a child has been baptised as a Catholic or received into the full communion of the Catholic Church but the family is unable to produce the written evidence. It seems to me that the circumstances when a family would not be able to provide certification of a child’s baptism or reception would be limited, and might include, for example, when the family possessions have been destroyed in a house fire, or perhaps, when a family has had to flee a conflict zone without their possessions. In such difficult circumstances, I consider that acceptance of alternative evidence would be reasonable, and I note that the definition makes clear that the parish priest must still consult with the diocese before deciding how any alternative *“written evidence is to be produced in accordance with the law of the Church.”*
30. More importantly, I note that the school has used in its arrangements the definition of Catholic provided by the diocese in its model admission policy for Newcastle secondary schools. Paragraph 1.38 of the Code requires that *“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...*” The school has used the definition of Catholic laid down by the diocese which is the designated religious authority for the school.

31. I consider that this definition of Catholic is clear about the evidence which will be required to verify that a child is Catholic. I am also of the view that it is reasonable for the definition of Catholic to make provision for the verification of the child’s Catholicity by means of other evidence in accordance with the law of the Church for what would be a small number of families in limited circumstances where production of the specified written verification is not possible. The school has had due regard to the guidance from the diocese.
32. I am persuaded that the allocation of places with respect to membership of the Catholic church is *“fair, clear and objective”* and, accordingly, complies with paragraph 14 of the Code. I also consider that parents would be able to look at the definition of Catholic and be able to understand easily how membership of the Catholic church would be verified and, therefore, how this faith-based criterion would be satisfied, which meets the requirements of paragraph 1.37 of the Code. I do not uphold this part of the objection.

#### Feeder schools

33. The first matter of concern to the objector regarding feeder schools is their *“overuse”*. The objector observed that priority for children having attended one of the named feeder schools is given at oversubscription criteria B, F and H.
34. The objector drew my attention to the Code at paragraph 14 which 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”*, and to paragraph 1.15 which requires that *“any feeder school included within an oversubscription criterion **must** be made transparently and on reasonable grounds.”*
35. The objector referred to the 2014/15 Annual Report of the previous Chief Schools Adjudicator and stated, in particular, that there should be *“sufficient places at the receiving school for (i) children attending the feeder schools to have a realistic chance of progressing to the receiving school and (ii) places available for children not attending the feeder schools... if the sum of the published admission number of the feeder schools is almost the same as, or greater than, that of the receiving school, it is very likely that giving priority to children at all the feeder schools will be judged unfair.”*
36. The objector suggests that the *“use”* of 13 named feeder schools in the arrangements *“unfairly disadvantages children who have not attended any of the named feeder schools for one reason or another.”*
37. The objector explained further that *“the School’s PAN for entry into year 7 is 200 boys whereas the total number of children leaving the named feeder schools is around 400. This means that, in conjunction with the other oversubscription criteria, not all local boys who did attend any of the thirteen named feeder schools are likely to get a place; and those boys not attending*

*any of the thirteen named feeder schools will find it all but impossible to get a place.*

38. The 13 primary schools named as feeder schools in the arrangements are as follows (PAN in brackets): Sacred Heart, Fenham (30), St Bede's, Denton Burn (30), English Martyrs, Fenham (60), St George's, Bells Close (20), St Oswald's, Gosforth (30), St Charles', Gosforth (30), St John Vianney, West Denton (60), St Cuthbert's, Kenton (30), Our Lady and St Anne's (30), St Cuthbert's, Walbottle (30), St Michael's, Elswick (30), St Mark's, Westerhope (30) and St Joseph's, Benwell (30). It is the case that the combined PAN of 440 for these thirteen feeder primary schools does greatly exceed the 200 places available in Year 7 at the school.
39. In its letter of 6 June 2017, the diocese said the comment that there is an overuse of feeder schools *"fails to take into account that St Cuthbert's is a school for boys. Consequently, to compare the year seven PAN to the total number of children is not helpful... on the basis that approximately 50% of the children will be boys and 50% girls the numbers do not support the contention that there is an overuse of the feeder schools."*
40. The local authority explained in its response to the objection of 8 June 2017 that *"the data presented by the objector regarding the number of children in the feeder primary schools and the number of places available in year 7 fails to recognise that half the children in the primary schools will be female and therefore will not be eligible to apply for a place at St Cuthberts, which is an all-boys school. The Council's analysis of the outcome of national offer day is that 55 students offered places did not attend a feeder primary school (27.5% of the intake) which clearly demonstrates that there are sufficient places for those in the feeder primary schools that want them and also space for additional children to be admitted."*
41. In letters dated 11 July 2017, the objector welcomed the statistical information from the school and the local authority and added that *"from the statistics provided there does indeed appear to be sufficient number of places available to children attending the thirteen named feeder schools as well as a reasonable number of places left over for children attending other primary schools. This is to be welcomed."* The objector expressed the hope that the school, the diocese and the local authority might *"continue to monitor the situation going forwards to ensure fairness for children attending the named feeder primary schools as well as for children attending other primary schools."*
42. As there are likely to be some places available in Year 7 for boys who have not attended any of the named feeder schools, it seems to me that boys who have not attended any of the named feeder schools are not unfairly disadvantaged. On this basis, I consider that the arrangements are not unfair and, accordingly, do not contravene paragraph 14 of the Code.
43. The objector also suggested that naming 13 feeder schools contravenes the Code at paragraph 1.15 which requires that *"any feeder school included within an oversubscription criterion **must** be made transparently and on reasonable grounds."*

44. The 13 feeder schools are named clearly in the arrangements, and have been feeder schools for some considerable time. The school confirmed in its email of 4 September 2017 that *“the named Catholic primary schools have been feeders to us for as long as we can recall.”* I consider that the inclusion of the 13 feeder schools has been made transparently.
45. In the same email of 4 September 2017, the school explained that *“we have not selected the 13 Catholic primary schools: they are allocated by the Roman Catholic Diocese of Hexham and Newcastle. They are Catholic primary schools in the West End of Newcastle.”* I have looked on the map of the local authority area at the location of the feeder schools which confirm that they are distributed in the western half of the local authority area.
46. The school also outlined some of the links it has had for many years with all of its feeder schools, such as *“a Year 5 Festival Day is held annually in May – this has been the case for at least 15 years. Engineering, Maths taster days take place annually in the Autumn term – again this has been the case for 10 years.”* The school has established links with all its feeder schools which, in my view, constitutes reasonable grounds for including the 13 feeder schools in the oversubscription criteria. I am persuaded that there has been no *“overuse”* of feeder schools in the arrangements. The inclusion of the 13 feeder schools in the arrangements meets the requirements of paragraphs 14 and 1.15 of the Code and from the evidence available to me, local children are unlikely to be disadvantaged for *“not having attended any of the named feeder schools for one reason or another.”* I do not uphold this part of the objection.
47. The objector also questioned the fairness of naming as feeder schools two Gosforth Catholic primary schools: St Charles’ and St Oswald’s. The objector observed that these two feeder schools in Gosforth are *“also named as feeder schools for St Mary’s Catholic High School in Longbenton, which is geographically much closer to these two schools.”* The objector said that *“naming these two schools in particular as feeder schools unfairly disadvantages local children who have not attended any of the named feeder schools for one reason or another.”*
48. The diocese confirmed that *“it is not uncommon for a primary to be named as a feeder school for more than one secondary. In the case of St Charles’ and St Oswald’s this has been the situation for many decades.”*
49. The school acknowledged in the email of 4 September 2017 that the two named Gosforth feeder schools *“also feed to St Mary’s Catholic Comprehensive School in the East End of Newcastle... Parents appear happy with this as they can choose either a Catholic single sex or a Catholic co-educational environment.”*
50. The objector also suggested that it is uncommon for a primary school to be the named feeder school for more than one secondary school. In this case, the two Gosforth primary schools have been named as feeder schools for both St Cuthbert’s Catholic High School which is a single-sex boys’ school, and for St Mary’s Catholic High School which is co-educational. In my experience, it is not unusual for two secondary schools serving a densely populated area, such

as Newcastle, to share as feeder schools one or more of the local primary schools, particularly when there is an element of choice between single-sex and co-educational schools in the locality.

51. I have also looked on the local authority map at the distribution of feeder schools for the two Catholic secondary schools. As already stated, the feeder schools for St Cuthbert's are in the western half of the local authority area, and I note that the two Gosforth schools are on the eastern edge of it. Whereas, the feeder schools for St Mary's Catholic High School are in the eastern half (and some beyond the perimeter) of the local authority area, with the two Gosforth schools at the western edge. It seems to me, therefore, that it is not surprising that both Catholic secondary schools have named the two Gosforth Catholic primary schools as their feeder schools.
52. The naming of the two Gosforth feeder schools in the arrangements accords with the requirements of paragraph 1.9(b) of the Code. The selection of the two Gosforth primary schools as feeder schools is transparent as both Gosforth schools have been feeder schools for many years. I am also of the view that the selection of these two Gosforth schools as feeder schools has been made on reasonable grounds as the school has long-established curricular links both of them. The naming of the two Gosforth schools as feeder schools meets the requirements of paragraph 1.15 of the Code.
53. The objector implied that the naming of the two Gosforth Catholic primary schools as feeder schools in the arrangements is unfair and *"disadvantages local children who have not attended any of the named feeder schools for one reason or another."* The final question for me to consider, therefore, is whether the inclusion of the two Gosforth schools as feeder schools in the oversubscription criteria meets the requirement of fairness as set out in paragraphs 14 and paragraph 1.8 of the Code.
54. The local authority's analysis of allocations data for the 200 places available in Year 7 for September 2017, as explained in the paragraphs above, indicates that *"55 students offered places did not attend a feeder primary school (27.5% of the intake) which clearly demonstrates that there are sufficient places for those in the feeder primary schools that want them and also space for additional children to be admitted."* From the evidence presented, it appears unlikely that local children who have not attended any of the feeder schools will be disadvantaged. However, as the evidence available to me is limited, it may be helpful for the school, the diocese and the local authority to continue to monitor the situation in forthcoming admission rounds to ensure that local children attending other primary schools are not disadvantaged by the inclusion in the arrangements of the two Gosforth feeder schools.
55. I consider that the inclusion in the arrangements of the two Gosforth primary schools as feeder school is fair and therefore complies with paragraphs 14 and 1.8 of the Code. I do not uphold this final part of the objection.

Maintenance of the waiting list

56. When I considered the arrangements as a whole there was one other matter which appeared to me not to meet the requirements relating to admissions. The arrangements appeared to be in breach of the Code at paragraph 2.14 regarding the deadline by which any waiting list must be maintained.

57. The Code at paragraph 2.14 requires that an *“admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission”* but the arrangements state that the waiting list will be maintained *“for one school term”*. I consider that the reference to *“one school term”* is rather vague and although it is likely to be interpreted as the autumn term, that term will end each year before Christmas and hence well before 31 December each year. The requirement for the waiting list to be maintained *“until at least 31 December”* has not been accurately reflected in the arrangements.

### **Summary of case**

58. I have not upheld any of those parts of the objection that are within my jurisdiction for the reasons stated in the paragraphs above. Accordingly, I do not uphold the objection to the admission arrangements for St Cuthbert's Catholic High School for September 2018.

59. Having considered the arrangements as a whole I find that the published deadline by which any waiting list must be maintained does not meet the requirements of the Code at paragraph 2.14. Paragraph 3.1 of the Code requires the admission authority to revise its arrangements to give effect to the Adjudicator's decision within two months of the date of this determination.

### **Determination**

60. 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 governing body on behalf of the Academy Trust for St Cuthbert's Catholic High School, Newcastle upon Tyne.

61. I have also considered the arrangements in accordance with section 88I(5) and find one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

62. 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: 12 September 2017

Signed:

Schools Adjudicator: Ms Cecilia Galloway