



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3309

Objector: Worcestershire County Council

Admission Authority: The Governing Body of Tardebigge
Church of England First School, Tardebigge,
Worcestershire

Date of decision: 27 September 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of Tardebigge Church of England First School.

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(4) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the local authority (the objector), about the admission arrangements (the arrangements) for Tardebigge Church of England First School (the school), a voluntary aided school with a Church of England religious character for children aged five to nine years old for September 2018. The objection relates to a number of elements in the admission arrangements which the objector believes do not comply with the School Admissions Code (the Code).
2. The local authority for the area in which the school is located is Worcestershire County Council. The local authority is the objector and is a party to the objection. The other parties to the objection are the

Diocese of Worcester (the diocese) which is the designated religious authority for the school, and the school's governing body.

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 an objection to these determined arrangements on 15 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a) the objector's form of objection dated 15 May 2017;
 - b) the school's response to the objection and supporting documents;
 - c) the comments of the diocese on the objection;
 - d) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e) a map of the area identifying relevant schools; and
 - f) a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 19 July 2017 at the Diocese of Worcester offices (the meeting). The chair of governors of the school was present at the meeting together with the school administrator, the Diocesan Director of Education, the personal assistant to the Director of Education and Group Secretary of the Diocesan Education Team and the Mainstream Admissions Officer for the local authority.

The Objection

6. The original arrangements set out nine oversubscription criteria with a section of definitions and notes about other elements of the admissions process. The objection was that:
 - the criterion which applies to children whose *"parents are active and practising members of established Christian and non-Christian religious faiths"* does not comply with paragraphs 14, 1.37 and 1.38 of the Code and it is not for the school to determine what constitutes active and practising members in another faith; and

- the arrangements are not clear on the issue of late applications and, therefore, do not comply with paragraph 14 of the Code.

Other Matters

7. When I reviewed the arrangements, I noted the following ways in which they appeared not to conform with the Code. These were subsequently discussed at the meeting on 19 July 2017. These matters concerned:
 - the criterion giving priority to children from Church of England families “*whose parents are active and practising members of [named churches]*” may not be clear and so may not meet the requirements of paragraphs 14, 1.8 and 1.37 of the Code;
 - the criterion headed Redditch Holy Trinity “*whose parents or legal guardians are active and practising members of [named churches]*” may not be clear and so may not meet the requirements of paragraphs 14, 1.8 and 1.37 of the Code; and
 - the arrangements did not make clear to parents how the waiting list would be operated by the school.

Background

8. The school is a Church of England voluntary aided primary school for five to nine year old children. The Published Admission Number (PAN) for admission to the reception year (YR) is 30. The admission arrangements for 2018 were determined by the governing body on 31 January 2017.
9. The admission arrangements included details about the catchment area used by the school followed by more information about the terms used including, appeals, waiting lists, school entry, admission of children outside their normal age range and in-year admission. The arrangements included nine oversubscription criteria which can be summarised as follows:
 - 1) Relevant looked after and previously looked after children
 - 2) Siblings of pupils at the school
 - 3) Children for whom it is the only school in the catchment area
 - 4) Children for whom it is the nearest Church of England Aided school
 - 5) Children for whom it is not the only school in the catchment area
 - 6) Children with medical, physical, social or compassionate needs
 - 7) Members of Redditch Holy Trinity churches
 - 8) Members of other denominational and religious faiths

9) Other children by distance.

The school is usually oversubscribed and so has to apply its oversubscription criteria.

10. The school sent me proposed revised arrangements including a new proposed supplementary information form (SIF) following the meeting. These proposed arrangements have addressed some of the aspects of the objection and the matters I raised under section 88I. The school acted with commendable speed.

Consideration of Case

11. The objection refers to the eighth criterion relating to children of other denominational and religious faiths which states: *“Children whose parents or legal guardians are active and practising members of established Christian and non-Christian religious faiths. For all applicants, the school’s Ministerial form, duly completed by the parish priest or faith leader must accompany the application. This must include written confirmation of a history of at least monthly attendance at their place of worship for a minimum period of a year prior to the date of application. If this information is missing, this criterion is not met.”* The objector says that these parts of the admission arrangements do not comply with paragraphs 14, 1.37 and 1.38 of the Code. Paragraph 14 of the Code states that *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* Paragraph 1.37 states that *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonable satisfied.”*

12. Paragraph 1.38 states that *“Admission authorities for schools designated as having a religious character must have regard to any guidance from the body of 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 the Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practise of the faith is to be demonstrated.”*

13. The term *“active and practising”* used in the arrangements is not defined. It is hence not clear and, therefore, not compliant with paragraph 14 of the Code. It is unclear what purpose is served by the use of both *“active”* and *“practising”* in relation to membership of a faith body. An individual whose membership is active will surely be one who practices his or her faith and one who practices will surely be active. The arrangement goes on to say that this active and practising membership must include attendance at religious services but the use of include suggests that something else in addition is required and

what this may be is not spelt out. This also makes the arrangements unclear. It also means that parents would not be able to tell from the arrangements whether their own practice met the school's requirements or not. This means that the arrangements do not conform to paragraph 1.37 of the Code, the relevant section of which I set out above.

14. Paragraph 1.9i of the Code provides that admission arrangements *“must not ...prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)”*. The diocese, as the religious authority for the school, stated in its response that it treats each of its schools as unique and does not offer a one size fits all generic style of advice but offers advice on a school by school basis should it be sought. There is no requirement on a religious authority for a school to issue guidance on admissions to schools. The Code, however, is specific in that schools have to have regard to any guidance from the relevant designated religious body, but the absence of such guidance does not prevent a school with a religious character from having faith-based arrangements although it does have certain consequences in terms of what those faith-based arrangements may contain.
15. As there is no diocesan guidance setting out religious activities, the school cannot take account of religious activities which are not worship and which might fall within *“active and practising membership”* even if this term were defined. I uphold this part of the objection.
16. The objector has also commented on the Ministerial Form (the Code refers to a supplementary information form (SIF)) which says: *“Please use the space below to state, as fully as possible, any knowledge you have which will confirm the statement that the **parent(s)/guardian(s)** of the child named above have attended their place of worship at least monthly for the last twelve months.”* The objector states that *“it is not for the school to determine what constitutes active and practising members in another faith, it is for the body or person representing that faith to determine a specific/measurable criterion for “active involvement” in that faith.”* The objector contends that some external body other than the admission authority should be responsible for deciding what the test of religious practice or affiliation should be to meet this criterion. This is not the case. It is the responsibility of the admission authority to determine its admission arrangements, including (for a school with a religious character) the nature of any faith-based oversubscription criteria. It remains, therefore, for the admission authority to decide what test of religious practice or affiliation to employ for both the denomination of the school and any other faiths or denominations to whom priority is given. In doing so, of course, it must have regard to any guidance from its own faith body and must also meet all requirements relating to admissions. I do not uphold this aspect of the objection.

17. The school has submitted proposed revised arrangements and the eighth oversubscription criterion in the original arrangements relating to other denominational and religious faiths has been removed. The proposed revised arrangements for the fourth criterion headed "*Denominational*" has removed the word "*active*" from the arrangements as it is not compliant with paragraph 14 of the Code as set out above. The seventh criterion headed "*Other Denominational – Redditch Holy Trinity*" continues to include the word "*active*" which is not compliant with the Code.
18. The proposed revised arrangements in both criteria above continue to state that the Ministerial form (SIF) must "*include written confirmation of a history of at least monthly church attendance for a minimum period of a year prior to the date of application.*" The word "*include*" could be interpreted as assuming other information is to be provided. These statements are therefore unclear and do not conform with paragraph 14 of the Code.
19. The proposed revised arrangements in the Ministerial Form (SIF) continue to include the word "*active*" when referring to the two oversubscription criteria above and these, as stated above, do not comply with paragraphs 14 and 1.37 of the Code. Part 2 of the Ministerial Form (SIF), in the proposed revised arrangements, requests Ministers to "*state, as fully as possible, any knowledge you have which will confirm the statement that the **parent(s)/guardian(s) of the child named above have attended their place of worship at least monthly for the last twelve months.***" This statement could be interpreted as requiring more information from the Minister than a confirmation that the parent(s)/guardian(s) has attended church. On that basis it could be subjective and is not compliant with paragraph 14 of the Code.
20. The criteria refer to "*members of established Christian and non-Christian religious faiths*". However, no definition or explanation is given of "*established*" which means that it is not clear which denominations or faiths meet this test. This means that the arrangements do not comply with paragraph 14 of the Code (set out in paragraph 11 of this determination above) as they are not clear. As parents would not know how an application would be considered under this faith-based criterion and, thus, how places would be allocated, the arrangements also fail to comply with paragraph 1.37 the relevant part of which is also set out above.
21. The other element of the local authority's objection relates to the section in the school's arrangements about late applications. The objector has commented that "*in one part the policy states no information will be considered after the closing date and in another sentence refers parents to the Local Authority Admission Guide, but does not make clear why. If the school follows the same policy in relation to late applications, it needs to make this clear to parents and advise them what the procedure is. It is not clear to parents where, using the link provided, that information can be found.*" The objector

states that this does not comply with paragraph 14 of the Code. I uphold this part of the objection. The school's proposed revised arrangements have amended the reference to late applications to ensure compliance with the Code.

22. The arrangements provide that a waiting list would be maintained termly. Paragraph 2.14 of the Code sets out that “*each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission*”. The end of the autumn term each year will fall well before 31 December. The school's proposed revised arrangements have amended this section.

Summary of Findings

23. I have considered all elements of the objection and I find that the arrangements did not comply with the Code in all respects except one. I did not uphold one element of the objection which suggested that it was not for the school to determine what constitutes active and practising involvement in a faith. This is not the case as it is the responsibility of the admission authority to determine all the arrangements. In addition, I identified a number of further respects in which the arrangements do not conform with the Code.

24. After a meeting with the parties a proposed revised set of arrangements were produced which corrected some of the objector's points and the adjudicator's point of non-compliance. The Code requires the school to vary its arrangements and then to publish its varied arrangements on its website.

Determination

25. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of Tardebigge Church of England Aided First School.
26. 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.
27. 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: 27 September 2017

Signed:

Schools Adjudicator: Mrs Lorraine Chapman