



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference: VAR756**

**Admission Authority: The Governing Board of St Augustine's Catholic Primary School, Hoddesdon, Hertfordshire**

**Date of decision: 6 August 2018**

### **Determination**

**In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Augustine's Catholic Primary School for September 2019.**

**I determine that for admissions in September 2019 the school may remove, from the oversubscription criteria of the admission arrangements, the category of practising Catholic families evidenced by the Certificate of Catholic Practice. Applications from Catholic children will be evidenced by the submission of a baptism certificate.**

**I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements for 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. The board of governors of St Augustine's Catholic Primary School (the school) has referred a proposal for a variation to the admission arrangements (the arrangements) for the school, for September 2019 to the Office of the Schools Adjudicator. The school is a voluntary aided school for children aged 3 to 11 in Hoddesdon.**
- 2. The proposed variation is to remove from the oversubscription criteria the category of applications from practising Catholic families evidenced by the Certificate of Catholic Practice (CCP). Applications from Catholic children will be evidenced by the submission of a baptism certificate.**
- 3. The local authority for the area in which the school is located is**

Hertfordshire County Council. The local authority is a party to the variation together with the Diocese of Westminster (the diocese) which is the religious authority for the school.

### **Jurisdiction**

4. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

*“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.*

5. I am satisfied that the proposed variation is within my jurisdiction.
6. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

### **Procedure**

7. In considering this matter, I have had regard to all relevant legislation, and the School Admissions Code (the Code).
8. The documents I have considered in reaching my decision include:
- the referral from the board of governors dated 12 May 2018 and supporting documents;
  - the determined arrangements for 2019 and the proposed variation to those arrangements;
  - a copy of the letter notifying the appropriate bodies about the proposed variation; and
  - comments received on the proposed variation from the local authority.

### **Other matters**

9. When I considered the arrangements as a whole it appeared to me that there were other matters that did not, or may not, conform to the Code. I noted that, following the numbered oversubscription criteria and under the heading “Exceptional need”, there is an additional reference to applications

based on social, medical and pastoral needs. My concern was that the arrangements did not make clear whether this was a separate oversubscription category and, if so, where it was supposed to feature in the school's criteria or, if it were not a separate category, how it was used. This meant it might not comply with paragraph 1.8 of the Code, which states "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation."

10. My second point considers oversubscription criteria 10 and 11 and the Supplementary Information Form (SIF) which refer to "a letter of support from a minister". Paragraph 1.37 of the Code sets out that "admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied." A letter of support could be perceived as subjective and, therefore, not clear to parents.

### **The proposed variation**

11. The governing board of the school has requested that the category of applications from practising Catholic families, evidenced by the Certificate of Catholic Practice, be removed. The oversubscription criteria as they were determined by the governing board are as follows:
1. Catholic children looked after and Catholic children, who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or a special guardianship order) immediately after being looked after.
  2. Catholic children of qualified teaching staff employed at the school for a minimum of two years at the time of application.
  3. Catholic children with a sibling attending the school at the date of admission, from practicing Catholic families supported by a priest's Certificate of Catholic Practice.
  4. Catholic children from practicing Catholic families supported by a priest's Certificate of Catholic Practice.
  5. Other Catholic children with a sibling attending the school at the date of admission.
  6. Other Catholic children.
  7. Other children looked after and other children, who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or a special guardianship order) immediately after being looked after.
  8. Other children of qualified teaching staff employed at the school for a minimum of two years at the time of application.
  9. Children of catechumens and members of an Eastern Christian Church.

10. Other Christians with a sibling at the school at the date of admission who can provide a baptismal certificate or a letter of support from a minister.
11. Other Christians whose parents can provide a baptismal certificate or a letter of support from a minister.
12. Any other children.

## **Background**

12. The school has a Published Admission Number (PAN) of 30 and is generally oversubscribed and able to offer places to all the Catholic children who apply. In both 2016 and 2017, the last place offered was under oversubscription criterion 6 above (other Catholic children). The governing board determined its admission arrangements for September 2019 on 13 December 2017. At that meeting, the governors discussed the new guidance issued by the Diocese of Westminster in July 2017 on admission to Catholic schools. That guidance defined 'Catholic' as the basic first category in admission arrangements and 'practising Catholic' as a baptised Catholic child with a CCP. The guidance states "*A higher test than 'Catholic' (ie that of 'practising Catholic') must not be used unless there is an absolute shortage of places in the locality.*"
13. In its application for a variation to admission arrangements, the school wrote that "*It [the guidance] did not specify that the school must remove this just that it can choose to if catholic schools in the area are generally under subscribed by Catholics. As our school is generally over subscribed we did not feel it necessary to make this change to our policy straight away.*"
14. The decision to apply for a variation to the admission arrangements arose because the school learned that a neighbouring school, St Cross Catholic Primary School (St Cross), also in Hoddesdon, had consulted on a change to its admission arrangements for September 2019 by removing the priority given to children considered to be practising Catholics by virtue of holding a CCP. Following consultation, St Cross removed that priority given to practising Catholics as distinct from other Catholics.
15. The governing board of the school met on 14 March 2018 to consider the implications for the school of the change in admission arrangements at St Cross. The link governor for admissions had consulted the diocese and been informed that the school could either apply for an in-year variation by 15 May or consult on the change for September 2020. The school decided that it should make the same change as St Cross to bring the policies of the two schools in alignment.
16. The school reported that it had not known about the consultation by St Cross until mid-December when the parish priest brought it to its attention. It said that it tried to contact St Cross during the consultation but did not

have a response until February 2018 by which time St Cross had determined its admission arrangements.

17. The local authority reported that, acting as an administrator for consultation by admission authorities for September 2019, it contacted all schools by email on 20 November 2017. The consultation ran until 5 January 2018. It is surprising that the school was not aware of the consultation about the arrangements for St Cross but I cannot speculate about the reason.
18. The school's link governor for admissions notified the local authority on 28 March 2018 about the governing board's decision to seek a variation and requested information about the schools that should be notified. The local authority raised some concerns about the school's decision to change its arrangements to bring them into line with St Cross. It commented that St Cross, although admitting up to its PAN, had (unlike St Augustine's) not reached capacity with Catholic children. It reminded the school about the need to consult the diocese, as required by paragraph 1.38 of the Code.
19. The school notified the appropriate bodies, as required by paragraph 3.7 of the Code and reported no responses.

### **Consideration of the case**

20. This school has applied for this variation because they consider that applications from Catholics in the area may be affected by the lower test of being a Catholic, which St Cross has adopted. All of its places have been allocated to Catholic children (who are prioritised in its arrangements over children who are not Catholic). By contrast, St Cross has admitted children who do not identify any faith. The school has reported that the numbers of applications from practising Catholics, which it defines as Catholic children with a CCP, had gone down in 2018, and it considered that the change to the arrangements at St Cross would impact further on applications from Catholic parents. There was an overlap with parents applying to both schools and the school wanted *"to protect pupil numbers while hoping that parents choose the school for ethos, teaching and learning."* It argued that, as both schools are administered by the same church, the admissions policies need to be broadly in line; having the two schools with different criteria would make this administratively complicated for the parish priest who is required to issue any CCP.
21. I do not accept this argument: the parish priest has to provide a copy of the child's baptismal certificate for both schools and, if the school's arrangements remained unchanged, a CCP for applications to the school for those children seeking priority as practising Catholics (being those with a CCP). I do not consider that the parish priest would find this *"administratively complicated"*. It is, after all, no more and no less than any Catholic priest has to do where any school uses the CCP.
22. The revised guidance issued by the diocese last year set out that the higher test of a practising Catholic should not be used unless there is a shortage of Catholic places in the area. Both schools are expected to

ensure that their arrangements give priority to applications from Catholic families. At present, there are sufficient Catholic places in the two schools to ensure that all local Catholics who want their children to attend a Catholic primary school are able to achieve this.

23. The diocesan guidance also refers to the Catholic community and states “*no school should act for its own perceived interests alone*”.
24. I have considered whether the school has met the requirements of paragraphs 3.6 and 3.7 of the Code in respect of variations. Paragraph 3.6 sets out that “*Admission authorities may propose [other] variations where they consider such changes to be necessary in view of a major change in circumstances.*” The school’s request for a variation was triggered by the change of arrangements in a neighbouring Catholic school. Although the local authority managed the consultation by St Cross for the changes it made, and the school was on the list of those consulted, it is surprising that St Cross did not notify the school directly about its proposals. It could be argued that the schools should have worked more closely together but that is not for me to take into account.
25. The school has submitted varied admission arrangements, which remove the references to practising Catholics, and the CCP in oversubscription criteria 3 and 4, amended those criteria, and deleted criteria 5 and 6. I am content with the proposed changes. The SIF will also need to be amended.
26. The school has decided that it wishes to make this change and the diocese has confirmed that the change is acceptable. I have, therefore, decided on balance to approve the variation.

### **Other matters**

27. I turn now to the other matters I identified when I reviewed the arrangements. My first point refers to the text following the numbered oversubscription list and under the heading “*Exceptional Need*”, which reads:

*“The Governing Body will give top priority after the appropriate category of looked-after children, to an application where compelling written evidence is provided at the time of application, from an appropriate professional such as a doctor, priest or social worker, of an exceptional social, medical, pastoral or other need of the child, which can only be met at this school. Priority will not be given unless the aforesaid written evidence is produced by the closing date of applications, unless there has been a significant and exceptional change of circumstances within the family since the initial application was submitted.”*

28. I am concerned that the way this information is set out is not clear to parents. The school told me that the wording was taken from a standard template provided by the diocese. However, it noted, in the template, that there was a heading in bold before the information, which reads, “***Within each of the categories listed above, the provisions below will be applied***

***in the following order***". I agree with the school's proposal to add the heading, which makes the information much clearer for parents.

29. The second point I raised with the school was the reference in oversubscription criteria 10 and 11 and the SIF to "*a letter of support from a minister*". The letter of support is proposed as an alternative to the provision of a baptismal certificate. By asking for a letter of support there is the possibility that information other than membership of the church could be included. This is not clear to parents and does not conform to paragraph 14 of the Code, which requires that "*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*". The Chair of Governors has agreed to amend this wording so that the policy and the SIF refer to a "*letter confirming membership from a minister*". I commend the school's swift agreement to make the change.

## **Summary**

30. The school believes that the change in admission arrangements in a neighbouring Catholic primary school is a major change of circumstances and that, without a similar change, the school may be disadvantaged by lower numbers of Catholic children applying to the school. My view is that this argument is finely balanced but the school has moved quickly to apply for a variation and the diocese finds the change acceptable. I have therefore decided to agree the variation.

## **Determination**

31. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Augustine's Catholic Primary School for September 2019.

32. I determine that for admissions in September 2019 the school may remove, from the oversubscription criteria of the admission arrangements, the category of practising Catholic families evidenced by the Certificate of Catholic Practice. Applications from Catholic children will be evidenced by the submission of a baptism certificate.

33. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements for admission arrangements in the ways set out in this determination.

34. 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 August 2018

Signed: *L. J. Chapman*

Schools Adjudicator: Lorraine Chapman