



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3124

**Objector:** Surrey County Council

**Admission Authority:** The Governing Body of St Michael's Roman Catholic Primary School, Ashford, Surrey

**Date of decision:** 2 November 2016

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Michael's Roman Catholic Primary School, Ashford, Surrey.**

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

**By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Surrey County Council (the objector), about the admission arrangements (the arrangements) for September 2017 for St Michael's Roman Catholic Primary School, Ashford (the school), a voluntary aided school for children aged four to 11. The objector says that the arrangements fail to be clear and objective and fail to meet the requirement that they should permit parents to understand how faith-based oversubscription criterion are reasonably satisfied, as required by the School Admissions Code (the Code).

2. The local authority (LA) for the area in which the school is located is Surrey County Council. The LA is the objector in this case. The Roman Catholic Diocese of Westminster (the diocese) is also a party to the

objection by virtue of its role as the designated religious authority for the school.

### **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 its objection to these determined arrangements on 3 May 2016. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

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

5. The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 3 May 2016 and subsequent correspondence;
- b. the school's and the diocese's responses to the objection and supporting documents, and subsequent correspondence;
- c. material on the website of the diocese;
- d. confirmation of when consultation on the arrangements last took place;
- e. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
- f. a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 15 July 2016 at the offices of Surrey County Council, Woking, and of that provided subsequently by those who had been present at this meeting.

### **The Objection**

6. The school's arrangements give priority within groups of Catholic children to those of practising Catholic families, as evidenced by their possession of a Certificate of Catholic Practice (a CCP). This form provides for a priest to certify that the child is from a practising Catholic family. However, the objector points out that neither the certificate itself, nor the school's admission arrangements, state what form or frequency of religious practice is needed for the priest to do this. This, the objector says, could lead to different priests applying different measures of practice.

7. Secondly, the objector says that it is not clear what is needed for those of other Christian denominations or of other faiths to secure the support of the relevant Minister or religious leader which the arrangements stipulate is necessary.

8. The objector points to those provisions of the Code which require the criteria used to allocate school places to be “*fair clear and objective*” (paragraph 14), which require oversubscription criteria to be “*reasonable, clear, objective, procedurally fair*” (paragraph 1.8) and which state that “*admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied*” (paragraph 1.37). The objector is of the view that the school’s arrangements fail to comply with each of these requirements in respect of both parts of the objection.

### **Other Matters**

9. When I looked at the arrangements, I was concerned that there were a number of other respects in which they may not meet the requirements concerning admission arrangements. I therefore sought the comments of the school and the other parties on each of these points of concern, which were that:

(i) the priority given to children of “other faiths” in the absence of an explanation of which faiths were meant may not meet the requirement in paragraph 1.37 of the Code that parents can easily understand how any faith-based oversubscription criterion is satisfied;

(ii) the statement that parents can request that a child attend part-time until the age of compulsory schooling is reached may fail to make clear that part-time attendance is available as a right, as required by paragraph 2.16 c) of the Code;

(iii) the statement that “*all applicants are asked to submit the school’s Supplementary Information Form [SIF]*” may fail to meet the requirements set out in paragraph 2.4 of the Code in respect of those applicants for whom such a form is unnecessary, and

(iv) the arrangements may involve a meeting with parents that constitutes an unlawful interview.

### **Background**

10. St Michael’s Roman Catholic Primary School is a popular and oversubscribed school located in Ashford, Surrey. It admits up to 60 children to Reception (Year R).

11. The school’s admission arrangements for September 2017 say that if it is oversubscribed, priority will be given to applicants according to the following oversubscription criteria in order:

- a. Catholic (as defined) looked after and previously looked after children;
- b. baptised Catholic children with a CCP whose parent is a member of staff at the school (as specified under paragraph 1.39a) of the Code);
- c. baptised Catholic children with a CCP living in the school's catchment area (as defined);
- d. baptised Catholics living in the school's catchment area;
- e. other baptised Catholics with a CCP;
- f. other baptised Catholics;
- g. other looked after and previously looked after children;
- h. children of Catechumens (as defined) and of members of an Eastern Christian Church (as defined) living in the school's catchment area;
- i. children of other Christian denominations (as defined) living in the school's catchment area and whose application is supported by a minister of religion;
- j. children of other faiths living in the school's catchment area whose application is supported by a religious leader; and
- k. any other children.

12. The school, in common with a number of other Roman Catholic schools in the Roman Catholic Diocese of Westminster which are also the subject of objections concerning their admission arrangements, has decided to employ the CCP in its admission arrangements for the first time in 2017. Its previous practice had also been to give priority to children from practising Catholic families, but the means used by which parents evidenced that practice was different. A Diocesan Priest's Reference Form (a PRF) was employed for a priest to verify a stated type and frequency of practice set out in the school's arrangements. For September 2016 all the available places at the school have been allocated to those given priority because they were both baptised and practising Catholics (and to looked after or previously looked after Catholic children).

13. At the meeting which I held, there were present by common consent representatives of four other schools concerning whose admission arrangements for September 2017 there had been an objection made to the adjudicator because of the school's use of a CCP. The relevant parties for each of the cases were also present. One school representative attending by virtue of being a governor of one of the schools and hence one of its representatives was also able to put forward a national perspective as a result of his role as Director of the Catholic Education Service (the CES). I regarded this as a helpful circumstance.

## Consideration of Case

14. The provisions in the Code and elsewhere that are relevant to my considerations in this case are set out in the following paragraphs.

15. The admission authority for a voluntary aided school is its governing body, by virtue of section 88(1) of the Act. Paragraph 5 of the Code makes it clear that it is the responsibility of the admission authority for a school to ensure that its arrangements conform to what the Code requires, and paragraphs 1.1 and 1.9 state that it is for admission authorities to determine their arrangements. Paragraph 1.10 says *“It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”*

16. Schedule 3 to the School Admission Regulations 2012 sets out the body or bodies representing the religion or religious bodies of maintained schools, which in the case of Catholic schools is given as *“The Diocesan Bishop or the equivalent in canon law for the diocese in which the school is situated”*.

17. Paragraph 1.38 of the Code places a requirement on the admission authority for a school with a religious character to *“have regard to”* any guidance provided to it by the relevant faith body when constructing any faith-based oversubscription criteria *“to the extent that the guidance complies with the mandatory provisions and guidelines of this Code”*. Admission authorities may depart from such guidance, but may not do so lightly. The judgement of Cobb J in the London Oratory case ([2015] EWHC 1012 (Admin)) gives the terms under which they may do so within the law.

18. Paragraph 5 of the Code says *“It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code”*, paragraph 1.9 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.”* Thus the effect of the law and Code is that it is for admission authority of a school with a religious character to decide whether to have faith-based oversubscription criteria. If it does, it is also for the admission authority to decide which such criteria to employ and the admission authority must also have regard to any guidance given by its religious authority when drawing up faith-based arrangements.

19. There is an important further qualification when a school with a religious character determines faith-based oversubscription criteria and this is to be found at paragraph 1.9i of the Code. This says that: *“...admission authorities...**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)”*.

Cobb J provided further illumination on this point, saying that “laid out” means “*specifically provided for in or authorised in*” guidance from the religious authority.

20. Section 88A(1) of the Act provides:

*“No admission arrangements for a maintained school in England may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school”.*

#### Diocesan guidance and paragraph 1.9i of the Code

21. The diocese has told me that it issues no general guidance to schools concerning their admission arrangements, and that previous guidance was withdrawn when the CCP was introduced. The diocese also maintains a website, which when I visited it on 26 April 2016 included sample admission arrangements for a primary school which chooses to give priority to practising Catholics and a copy of the diocese’s bulletin to schools of January 2016. This latter document, under the heading “admissions” states that:

*“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.”*

22. The bulletin is clear that it is for schools to decide whether to include an element of priority based on practice. For schools that do so choose, it requests them to:

*“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”*

23. The sample admission arrangements for such a school posted on the diocesan website put these changes into effect. The diocesan schools’ bulletin of September 2015 which I also found on its website, says in relation to the CCP that “*All primary schools **must** use this form with immediate effect (for 2016 entry). All secondary schools **must** use this form for 2017 entry*”. It could not be clearer it seems to me that not only is there general guidance to schools from the diocese which is within the scope of paragraph 1.38 in spite of what it has told me, but that this guidance appears highly directive, as I shall illustrate below. The diocese has also itself referred at other times to the guidance which it has issued,

and I have no doubt that I may consider the guidance which the diocese has provided in the context of the Code's provisions relating to such guidance.

24. This directive approach in diocesan guidance is in line with the view expressed to me on behalf of the Catholic Education Service at the meeting with the parties, and in a written note sent to me subsequently, that it is for the relevant religious authority to lay down what any measure of religious practice used for the purposes of giving priority within a school's admission arrangements should be. This view is based on the belief that what paragraph 1.9i of the Code says, and what Cobb J has had to say about religious activities, applies to this matter concerning religious practice and authorises specification of the means for its demonstration. The view taken is that attendance at Mass is a religious activity for the purposes of paragraph 1.9i and that it is therefore for the religious authority to specify how participation in this activity is to be assessed and by whom. The note sent to me after my meeting by the Director of the CES has the following to say:

*"How is a school to determine whether or not a person is a practising Catholic in a way which is consistent with the Code, including what is 'laid out' by the Religious Authority (School Admissions Code, paragraph 1.9i)?"*

- *It asks for evidence from the relevant authority external to the school. The relevant authority in any particular case is the body that is competent to determine the question in hand. In the case of the question whether someone is a practising Catholic, only the authorities of the Catholic Church are competent to determine this matter, not any statutory body (such as an admission authority, local authority or appeal panel)."*

25. In the London Oratory case, Cobb J stated at paragraphs 90-91 that:

*"Para. 1.38 and para 1.9(i) of the Admissions Code address different issues; whereas the former (which concerns faith-based oversubscription criteria generally) permits the schools admission authority to depart from the Diocesan Guidance (as I find, only for clear and proper reason), the latter (which prohibits preferences being given to candidates on account of their hobbies or activities, save for faith-based activities of the candidates or parents who are applying to faith-based schools) does not."*

*"I..... conclude that the phrase "laid out" means specifically 'laid out' in schools admissions guidance published by the religious authority – ie 'specifically provided for in or authorised by' such guidance."*

26. My understanding of this judgement as it concerns paragraph 1.9i is that an admission authority may only use an activity which has been laid out for the purpose of giving preference in admission arrangements by the religious body, but that it goes no further than that. Cobb J has said that if something is a religious activity, it may be used in admission arrangements only if the relevant body says it may be so used. But there is nothing in the

judgement that extends this right of censure on the use of an activity by the religious body to a right to say how an activity which may be used will be taken into account. To say so, as the diocese and the CES do, is to misread the judgement, in my view.

27. I have set out above my conclusions on the view that has been expressed to me that paragraph 1.9i of the Code supports the specification by a religious authority of how a religious activity authorised by it is to be taken into account by a school. I will now consider each of the further issues which are related to the use of the CCP by the school as a consequence of this approach.

### Practising Catholic

28. As far as the school is concerned, the diocese has told me that the school was advised by it as far as its arrangements for 2017 were concerned to *“delete the definition of ‘practising Catholic’ which is no longer used in the admissions policy or the SIF”* and it has provided me with a copy of its letter to the school dated 15 January 2016 in which it issued this guidance. The relevant paragraph of that letter reads;

*“Following advice from the Catholic Education Service this week we are now deleting all reference to ‘practising Catholics’ from our policies and replacing them with a request for a Certificate of Catholic Practice”.*

29. The diocesan letter to the school continues:

*“To simplify matters I have re-written your criteria below to include the advice above.”*

It further states that all schools which give priority to practising Catholics must use the new CCP and as far as the school’s admission arrangements are concerned, it refers to *“these compulsory amendments”*.

30. The school has confirmed to me that it acted as advised by the diocese in deleting the definition of practising Catholic which had been in its draft arrangements and that it was sure that the diocese would provide the adjudicator with their justification for *“recommending this change”*.

31. The diocese has written to me saying:

*“The Diocese, as the Religious Authority, has issued guidance to its schools which lays out that, where schools give priority to practising Catholics, the production of a Certificate of Practice from the appropriate priest is conclusive proof that the person is a practising Catholic. Admission authorities are not permitted to use any other test.”*

It says that when the school does this *“they are complying with the guidance from their religious authority in accordance with paragraphs 1.38 and 1.9i of the Code.”*



32. I have set out above my view that, on the assumption that religious practice can be seen as a religious activity to which paragraph 1.9i of the Code applies, the specification of how this is taken into account by the admission authority is not authorised by this part of the Code.

33. Paragraph 1.38 of the Code states:

*“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 the person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”*

So the requirement to have regard to advice from the faith body is in respect of “*constructing faith-based admission arrangements*” and the next sentence of paragraph 1.38 places a requirement on admission authorities to “*consult*” with the religious body when deciding how “*membership and practice of the faith is to be demonstrated*”, which is to say much the same thing as “have regard to” guidance on this matter. I do not believe that it is possible to separate what is said about religious practice in paragraph 1.38 from the context of that paragraph as a whole and therefore from the requirement to have regard to the advice of the religious body, or from the duty to have regard to that advice being conditional upon its compliance with the Code.

34. My understanding of paragraph 90 of Cobb J’s judgement in the London Oratory case is that paragraph 1.38 does not permit a religious authority to specify how an admission authority may take practice of the faith into account, since the judgement makes it clear that guidance on this matter may be departed from legitimately (albeit not lightly) if the school has clear and proper reasons for doing so.

35. Nevertheless, in its response to the objection the diocese has said that “*it is for the diocesan bishop to decide how membership and practice of the faith is to be demonstrated*”, citing paragraph 1.38 of the Code in support of that view. Paragraph 1.38 says the religious body must be consulted before the school decides how membership or practice is to be demonstrated by applicants, not before it decides whether it has been demonstrated in an individual case (my emphasis) and I reject the view of the diocese that paragraph 1.38 sanctions individual decisions relating to admission oversubscription criteria which are taken by a body outside the school. My view is that paragraph 1.38 establishes that the admission authority must decide how practice is to be demonstrated in consultation with the faith body in order that it may then itself apply that definition without further reference on a case-by-case basis to that body. The admission authority must consult the religious body when setting the criteria that will apply, but has no power to delegate any decision on the application of its oversubscription criteria to other individuals who are not

themselves the admission authority, a subject to which I shall return.

36. The phrase which the diocese did not include when citing paragraph 1.38 to me was *"to the extent that the guidance complies with the statutory provisions of this Code"* and yet its inclusion is fundamental to an understanding of how the paragraph 1.38 can be read.

37. The diocese has explained its reasons for wishing to establish a means which allows schools to give priority in their admission arrangements to practising Catholics and at the same time to allow individual extenuating circumstances to be accommodated in the award of that status. These are understandable aims, but the question which I must consider is whether the means by which the school, as guided by the diocese, has chosen to fulfil them is a lawful one. Understandable aims do not diminish the obligation for admission arrangements to comply with the Code. The provisions which are relevant include:

(i) paragraph 14, which says:

*"...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";*

(ii) paragraph 1.8, which says:

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

(iii) paragraph 1.37, which says:

*"Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."*

38. Instead of there being clear criteria for being given priority on the grounds of religious practice, the school's admission arrangements give priority to those in possession of a CCP, the issue of which is in the gift of an applicant's parish priest. There is no easy way for any parent to know in advance that they will be able to fulfil the oversubscription criteria under which such priority is afforded. Even those parents who know, because they are 'practising Catholics' *"that Canon Law requires that they attend Mass on a weekly basis from at least 7 years of age"* (to use the diocese's words) and who attend Mass in accordance with those requirements cannot be certain that they will be "granted" (the term used in a letter to me from the diocese) a CCP. The arrangements do not make any reference to this being the case, and a meeting with the parish priest is still required at least in some cases, (although in all cases according to that same letter) before a CCP is issued. At the point of reading the school's admission arrangements, no parent will know for certain whether or not they will be given a CCP. Such a parent may have attended Mass every week for many years, or they may be a recent convert to Catholicism or a person

with extenuating circumstance that have prevented such attendance, but on reading the school's admission arrangements they would both be in the same position of not knowing whether they would be given priority on the grounds that they are a practising Catholic should they apply for a place at the school. In my view it is clear that this means that the arrangements do not meet the explicit and statutory requirements of paragraphs 14 and 1.37 of the Code, and I uphold the objection to them which has been made on these grounds.

39. I have explained above the link which exists between the guidance which the school has received and the school's arrangements. It is clear to me that the guidance from the diocese 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 for which that is the case, under paragraph 1.38 of the Code. Even if paragraph 1.9i applies, on the reading that practice is religious activity, any set of arrangements must comply with the other provisions of the Code in order to be lawful.

40. The diocese and the CES have also stated their view that it is lawful for an admission authority to give priority to those who are in possession of a CCP without defining what is meant by the term "practising Catholic" since this latter matter is a *"separate, but related question of what a person needs to do to become a practising Catholic"* which *"is not a matter for school admission arrangements"*. The analogy is drawn with the making of a professional medical judgement that a child has exceptional medical needs where a school would accept that judgement without being part of the judgement itself. So a school *"has neither the authority or(sic) the competence to determine what makes a person a practising Catholic, which is a matter for the Catholic Church"*, I am told. However, the issue of a CCP cannot reasonably be compared to a professional medical judgement about medical needs, which exist independently. The guidance to priests makes clear by contrast that the definition of "practising Catholic" within it is *"for the purposes of (the CCP) only and for no other purpose."* In any case, there are specific provisions as to what is acceptable concerning faith-based admission arrangements which cannot be so easily put to one side. The Code says how faith-based criteria are to come about and to what requirements they must conform. A comparison with means for giving priority on medical grounds has no effect on these, and I reject the notion which has been put to me.

41. Further, the diocese has told me that:

*"To state that a policy must include frequency and duration of attendance is directly contrary to equalities legislation. These decisions can and must only be made by the priest as sanctioned by the bishop. It would not be right to discriminate against a family who cannot attend Mass as regularly as they would like because of family illness or other grave reason. The Code of Canon Law makes provision for this by allowing a priest to absolve a family of their obligation in such circumstances. Equally a child from a family that does not practice, but is taken to Mass every Sunday by a grandparent or sibling must not be discriminated against. Those who*

*have recently been received into the Church may not have one or two year's (sic) practice and Canon Law gives the priest the option of releasing them from that obligation. These things cannot and may not be carried out by a school or a local authority and it is only the priest in communication with his parishioner who can make these decisions."*

That is, the diocese says that a clear statement of frequency and duration of religious practice in admission arrangements would by virtue of its inflexibility offend against equalities legislation. It has not explained this assertion in terms of any of the protected characteristics listed in the Equality Act 2010 and it is difficult to see what these might be, with the exception of disability. Even if it were to be established that prescribing levels of frequency and duration of religious practice in admission arrangements were indirectly discriminatory against disabled persons or the children of disabled persons, as to which I have seen no evidence, it is likely that this could be justified by the need to have clear objective and transparent oversubscription criteria. I do not consider that equalities legislation has any bearing on the matters I have to decide.

42. The diocesan Bishop is the relevant person whom the school must consult in this case, and the diocese says he has authorised parish priests to make case-by-case decision about practice on his behalf. It would clearly be impractical for him to make every decision that is required within the diocese, since a decision is required for every Catholic family seeking priority on the grounds that they are practising Catholics. The bishop has provided parish priests with guidance on the making of those decisions, as the diocese tells me *"to ensure consistency as far as possible"*. I have been provided with a copy of that guidance by the diocese. It says that there should be a single objective test of Catholic Practice and that this is whether the child comes from a practising Catholic family. It then immediately states clearly that:

*"It is for a priest to make the judgement whether a child comes from a practising Catholic family."*

43. If a judgement has to be exercised as to whether a family is practising, it seems to me that this is not an objective measure, and so neither is the test of Catholic Practice. The guidance does say that:

*"for the purposes of the Certificate of Catholic Practice, a person is a practising Catholic if they observe the Church's precept of attending Mass on Sundays and holidays of obligation"*

but goes on to discuss circumstances under which the CCP may also be granted which involve ascertaining Mass attendance on *"most Sundays"*, *"for a substantial period of time"*, with neither term quantified. It also says that *"Sometimes, unusually, a different pattern of practice may be judged by the priest to be equivalent"*, but that *"priests should enquire very carefully into the circumstances where the pattern of practice has not continued over several years."* Again, "several years" receives no definition or explanation and it is clear that there is no single objective definition of the term 'practising Catholic' anywhere in the guidance. It seems to me

entirely plausible, indeed almost inevitable, that different parish priests will apply slightly different standards when deciding whether a family should be issued with a CCP given all these uncertainties, potentially affecting admissions to the same school. This will be true for any school to which this approach applies, including St Michael's. I consider this does not meet the requirements of reasonableness, clarity, objectivity and procedural fairness for the school's admission arrangements in paragraph 1.8 of the Code, and I uphold the objection to them which has been made on these grounds.

44. Decisions about which children are admitted to the school require, indeed depend on, judgements made by individuals which are not accessible to scrutiny or verification. I consider that it is of great concern that this should be the case, since any system which introduces the potential for patronage of any kind is open to abuse.

45. The diocese has also said that:

(i) the CCP itself is not part of the school's admission arrangements, but the property of the Bishop's Conference of England and Wales;

(ii) the Bishop's guidance to priests on their completion of the CCP is similarly not part of the school's admission arrangements, so much so that schools are not made aware of its contents; and

(iii) neither the form nor the guidance to priests are therefore necessarily included in consultations carried out by the admission authority prior to its determination of its arrangements.

I shall now address these further issues.

#### The admission arrangements

46. The diocese has stated that the CCP is not part of the school's admission arrangements and so does not need to be published or consulted on as part of those arrangements. Instead it is published on the diocese's own website and the diocese says that "*The Certificate of Catholic Practice is a document that belongs to the Conference of Bishops of England and Wales. There is no point in sending it out to consultation as it cannot be altered or amended in any way*".

47. The note provided to me by the governor of one of the schools who was present at the meeting and who is also the Director of the CES says that the process for establishing evidence about religious practice used by a school in its admission arrangements is not part of those arrangements themselves. The situation, it says, is analogous to that for establishing membership of a faith or of exceptional medical needs. The note refers me to section 88(2) of the Act which says:

*"...admission arrangements, in relation to a school, means the arrangements for the admission of pupils to the school, including the school's admission policy."*

The diocese has written to me saying that the definition of admission arrangement in footnote 4 to the Code, which is:

*“the overall procedure, practices, and supplementary information used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”*

cannot enlarge the scope of that contained within the Act, and that any conflict between the two must be resolved in favour of that contained within the statute. The CES and the diocese imply that their view that the CCP is not part of the admission arrangements of the school, but rather, and in accordance with the definition of admission arrangements given in the Act, simply evidence used in their application, conflicts with the definition in the Code.

48. My view is that the definition of admission arrangements in the Code does not act to provide a definition wider than that in the statute, but is merely clarificatory in its effect. In any case, Section 84 of the Act obliges the governing body of a school to act in accordance with the relevant provisions of the Code in force from time to time when exercising their function as an admission authority. The CCP exists only for the purposes of school admissions. It is plainly and unarguably a device or means used to determine whether a school place is to be offered, just as the PRF was. It is clear that the CCP is a part of the arrangements which fall under this definition and so the school must include it as part of its admission arrangements. It is different to a baptismal or medical certificate in that these are evidence that a child meets a particular oversubscription criterion. In the admission arrangements which the school has determined, being able to obtain a CCP acts as an oversubscription criterion in itself.

49. For the same reasons it is also the case in my view that the guidance issued to priests forms part of the admission arrangements of the school, since parents would need to read it to be able to assess their prospect of obtaining a CCP, and since its purpose is to act in a way that regulates or determines whether a place is offered, notwithstanding the fact that it would not be capable of doing so objectively, as I have said.

50. While this is of secondary importance given my view about the employment of the CCP in the form in which it is used by the school in the first place, nevertheless, both the CCP itself and the guidance to priests should be published as part of the school's admission arrangements and form part of any consultation about those arrangements. To its credit, when it consulted on its proposed admission arrangements for September 2017, the school drew attention to the proposed use of the CCP and provided a copy of the form. It was also shown on the school's website as part of its admission arrangements when I looked there on 17 May 2016.

#### Other Christian denominations and other faiths

51. In its response to the objection, the school stated its willingness to add to the description of these two further groups of children to whom it gives priority a statement that a letter confirming membership of the relevant

faith community was required. However, it wrote to me again following its response to the further matters concerning its arrangements which I had raised with it, enclosing a revised version of its admission arrangements and evidence that these had been determined by the school's governing body. This revised set of arrangements gave no priority to children of other faiths, but did not contain the clarification concerning other Christian denominations which had been previously offered. Following my meeting with the parties, the school provided a further version of its arrangements which did so, but which the school said had not been determined by its governing body.

52. Although the school has made or offered to make changes to its arrangements, as these were originally determined and made the subject of the objection the arrangements did not make clear what was required as supporting evidence for the additional groups of children given priority on the grounds of faith. They therefore failed to comply with the requirement concerning their clarity in paragraph 14 of the Code, concerning the clarity of oversubscription criteria contained within them in paragraph 1.8 and concerning the ease with which parents could read them and easily understand how faith-based oversubscription criteria could be reasonably satisfied in paragraph 1.37. I uphold the objection that was made to this part of the arrangements.

#### Other matters

53. The school's most recently determined arrangements do not give priority to children of other faiths. As originally determined however they did so without stating which faiths were referred to or, alternately that the school simply accepted in all cases parents' statements of membership of a faith for the purpose of giving their application priority. The arrangements as originally determined so failed to meet the requirement of paragraph 1.37 concerning faith-based oversubscription criteria. The arrangements do now conform in this regard and the school need take no further action.

54. When the school made a re-determination of its arrangements, it included a clear statement that part-time attendance was available as a right to reception year children. However, as originally determined, the arrangements stated only that part-time attendance could be requested, and this did not meet the requirement of paragraph 2.16c) of the Code that the arrangements contain a statement of the sort which is now made by the school. The arrangements do now conform in this regard and the school need take no further action.

55. Again, in its revised admission arrangements, the school makes it clear that only those applicants seeking to have a priority accorded to their application in accordance with oversubscription criteria which require them to supply additional information need complete and submit the school's SIF. As originally determined however, the arrangements asked all applicants to submit the SIF, and so failed to comply with paragraph 2.4 of the Code which states that this should be request only of those for whom the information provided has a direct bearing on the application of

oversubscription criteria. The arrangements do now conform in this regards and the school needs take no further action.

56. I have also considered whether it is lawful for the admission arrangements of the school to involve parents meeting their parish priest in the context of their decision whether or not to issue a CCP. I have therefore sought the comments of the parties on this point.

57. The school has expressed itself content that the comments of the diocese on this matter should stand also as its response. The arrangements as originally determined by the school say that parents should *“take the Certificate of Catholic Practice”* to their parish priest for signature. Diocesan guidance to priests concerning these encounters with parents says that *“priests should enquire very carefully into the circumstances where the pattern of practice has not continued over several years”*. My reading of the arrangements in conjunction with this guidance leads me to believe that the intention is for there to be a meeting involving a dialogue between parent and priest, at least in some cases, and I have put this to the parties.

58. The diocese has responded by saying that neither the arrangements nor the CCP itself refer to a meeting and that *“so far as we and the school are aware such meetings do not take place”*. Its own letter to me of 13 May 2016 had said:

*“The school’s policy makes clear that it is through a meeting with the parish priest or the priest at the church where the family worships that the decision on whether or not to grant a CCP will be made.”*

However, the diocese in its response has apologised for making this statement which was, it says, “an error”. It accepts that the enquiry by the priest *“could, of course, include a meeting with parents”* but that the statement in the diocesan guidance should be seen in the context of the *“judgement”* to be made by the priest (to which I have referred earlier), the statement in the guidance that he (the priest) *“should have enough information to allow him to build up a complete picture of the family and its circumstances in order to exercise that judgement”* and that the guidance says that *“The test for Catholic practice...is susceptible to proof by reasonable evidence based on observation.”* It points to the test given for priests in the guidance (set out earlier in this determination) being based on Mass attendance and therefore *“capable of being observed objectively”* and the use in the guidance of the phrase *“by their own observation or other evidence”* concerning how a priest might be expected to make that assessment. It accepts that the guidance does refer to a meeting with parents, also involving the previous parish priest, in the case of a priest new to a parish but says that this is “surprising” and that it will raise this point with the CES and will suggest to the Bishops’ Conference that it be removed.

59. The diocese has also impressed upon me as *“the crucial point”* and also *“the key point”* that the diocesan guidance to priests is not a public document, but is internal to the Church and so its contents would not be



known to school governors in their role as admission authorities. The diocese takes the view that, since admission authorities will not know the process attached to the granting of a CCP, they cannot be held to account even if that process involves interviews since they could not be said to be “requiring” or “authorising” any interview with an applicant. It says the guidance to priests is “*of a different order to the Certificate*”, which I take to mean that it is not subject to the same considerations, for some reason. It certainly says the guidance to priests is not part of the school admission arrangements and perhaps that is what is meant.

60. Nevertheless, I have previously set out why I do consider the diocesan guidance to priests to be part of the school arrangements, and so do not accept that what it says cannot be laid at the feet of admission authorities which have given it currency by relying on the CCP in their admission arrangements. I shall now look at the other points made to me by the diocese in turn. My concern is to come to a view as to whether meetings which could take the form of interviews are taking place, or are likely to take place, as a result of the use by the school of the CCP and the means by which parents obtain it.

61. The diocese tells me that it and the school are not aware that there have been such meetings, but equally they do not say that there have not been any. This is the first year in which the CCP has been employed, and the deadline for making applications for primary school places will be 15 January 2017. So at the time of the diocese writing to me it is probably unlikely that any evidence of any meetings would have been available. It seems to me that the diocesan guidance to priests does expect an objective assessment to be made that may not necessitate any meeting so far as the frequency of Mass attendance is concerned, but that this is far less clearly so concerning the length of practice, which it is also necessary for the priest to be satisfied about before issuing a CCP. I had pointed this out to the parties, and the diocese has not allayed my concerns. Having referred to its own view as to the status of the guidance to priests, the diocese has in its response said:

*“Even under the guidance, it would be at the discretion of the parish priest as to whether a meeting is held and in most cases this would not be necessary”.*

62. In other words, the guidance to priests does not rule out priests’ holding meetings and in some cases suggests that they take place. The diocese does not rule out the possibility of meetings and implies that in some cases they would be necessary. Even if admission authorities cannot be said to have direct knowledge of meetings which could take the form of an interview being involved, it is they who are the admission authority, and they who have decided to give priority to children who have a CCP over those who do not. The wording of the Act prohibits interviews if they are taken into account “to any extent” in determining admissions to schools. It is clear that the possession of a CCP has the effect of determining which children are admitted to the school and which not, and it is clear that the process for obtaining a CCP will involve, in some cases at

least, meetings between priests and parents that may have the effect of interviews.

My view is therefore that the school's arrangements breach the prohibition on interviews in section 88A(1) of the Act, a prohibition repeated in the Code in paragraph 1.9m).

### **Summary of Findings**

63. I have explained above why I have concluded that the school's admission arrangements do not meet the requirement that parents can look at them and understand easily how places will be allocated. It is not possible for any reader to know whether or not they would be given the Certificate of Catholic Practice which is used by the school to give priority to some applications. As a result I have upheld the objection that they do not meet the requirements of paragraphs 14, 1.8 and 1.37 of the Code.

64. The school has followed diocesan guidance in the construction of this part of its admission arrangements, and I have said why it is relieved of the duty to have regard to this guidance as a result of the latter's failure to be compliant with statutory provisions within the Code. I have also explained why I am of the view that there is no other provision within the Code which sanctions specification by the school's religious body of the form in which a religious activity which the school wishes to take into account is to be demonstrated. The Code makes specific provision for the establishment of any faith-based oversubscription criteria to be used by a school with a religious character in conjunction with its religious authority and these cannot be put to one side by the diocese or the school. It is the duty of the admission authority to construct its admission arrangements and in doing so to comply with the law and the Code. It has failed to do so.

65. I have also set out why I am of the view that the school's admission arrangements as originally determined also breach the same provisions of the Code concerning other categories of faith-based priority.

66. Also, as originally determined by the school, the arrangements fail to comply with paragraphs 1.37, 1.9m), 2.16c) and 2.4 of the Code and I have set out the ways in which they do so and my reasons for coming to this view about them.

### **Determination**

67. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Michael's Roman Catholic Primary School, Ashford, Surrey.

68. 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.

69. 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: 2 November 2016

Signed:

Schools Adjudicator: Dr Bryan Slater