DETERMINATION

Case reference: ADA2410

Objector: The British Humanist Association

Admission Authority: The London Oratory School

Date of decision: 28 August 2013

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 the London Oratory School determined by the Board of Governors for the London Oratory School Trust.

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

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 as quickly as possible.

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 the British Humanist Association (the objector), about the admission arrangements (the arrangements) for September 2014 for the London Oratory School (the school), an academy school with age range 7 – 18 years. The objection is primarily concerned with the criterion used by the school to judge religious observance which requires service within a Catholic Parish or the wider Catholic Church and whether the school had made it sufficiently clear that children who are not Catholics could be admitted to the school if places were available.

Jurisdiction

1. The terms of the academy agreement between the London Oratory School and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in

accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the academy school, on that basis. The objecting body submitted their objection to these determined arrangements on 8 April 2013. There then followed correspondence with the Office of the Schools Adjudicator to establish the standing of the objector and whether or not it was a repeat objection since there had been a previous determination about similar matters made in December 2012. This correspondence was concluded on 22 May 2013.

1. By regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations (the regulations), an objection which raises the same or substantially the same issues as one which an adjudicator has determined within the preceding two years may not be made and in those circumstances I am not required to decide under the Act, section 88H(4), whether it should be upheld. In the determination made in December 2012, the adjudicator did not determine any objection under section 88H of the Act: rather, he considered the arrangements under section 88I. Regulation 22 therefore does not apply.
2. In respect of the standing of the objector, section 88H(2) of the Act and paragraph 3.3 of the Code, do not place any restriction on the bodies or persons who may refer objections to the adjudicator. The Code says “any person or body who considers that any maintained school of academy’s arrangements are unlawful......... can make an objection to the schools adjudicator”.
3. I am satisfied that neither of these matters prevent me from investigating the objection made under section 88H or from looking at the wider arrangements under section 88I of the Act. 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.

Procedure

1. In considering this matter I have had regard to all relevant legislation and the Code.
2. The documents I have considered in reaching my decision include:
	1. the objector’s email of objection dated 8 April 2013, the correspondence between the objector and the Office of the Schools Adjudicator about the objection and subsequent submissions from the objector;
	2. the school’s responses including supporting documents to the objection and other matters raised;
	3. Hammersmith and Fulham Council’s (the council’s) response to the objection and supporting documents;
	4. the Diocese of Westminster’s (the diocese’s) response to the objection and supporting documents;
	5. correspondence between the objector and the school during March 2013;
	6. the council’s composite prospectus for parents seeking admission to schools in the area in September 2013;
	7. confirmation of when consultation on the arrangements last took place;
	8. a copy of the minutes of the meeting of 4 March 2013 at which the governing body of the school determined the arrangements; and
	9. a copy of the determined arrangements for 2014.
3. I held a meeting involving the objector, the school, the diocese and the council on 17 July 2013. I have drawn on the information that I gained at this meeting and in subsequent correspondence to assist me in reaching a determination.

The Objection

1. The first part of the objection is that the arrangements contain a criterion that asks parents to list service by the child and/or the parent(s) in a Catholic Parish or the wider Catholic Church. The objector states that the inclusion of service as a criterion does not comply with paragraph 1.9e of the Code which states that admission arrangements **must** **not** “give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority”.
2. The second part of the objection is that the arrangements are not sufficiently clear that children who are not Catholics may be admitted to the school.
3. The third part of the objection is that the school has not had regard to the advice of the diocese in determining its arrangements.
4. The fourth part of the objection is that the school’s website had not been changed to take account of the changes that were made following consultation (in particular the removal of the word "cleaning").

**Other Matters**

1. Having had these arrangements drawn to my attention, under section 88I of the Act I have looked at the arrangements as a whole and there

are some other matters that appear to breach the Code that I have drawn to the attention of the school and these are set out below.

 **Background**

1. The school is designated as having a religious character and was established as an academy on 1 August 2011. It is a non-selective school except that its funding agreement enables it to admit 20 boys into the junior school for a specialist music education based on general ability and aptitude for music. The school is located within the Diocese of Westminster and the Diocesan Bishop is the representative for the religious denomination as set out in schedule 3 to the regulations.
2. The school has stated that it wishes to ensure that those pupils who are allocated places at school are practising Catholics. The school states that “it has a very high level commitment to Catholic practice with a specific liturgical component, i.e. stress on the rituals of worship.”
3. The school is regularly oversubscribed with as many as 800 applicants for the published admission number (PAN) of 160 available places for admission at age 11.

**Consideration of Factors**

1. The school has laid out its objectives to admit practising Catholic children from Catholic families across London and has clearly spent considerable time and energy in devising its admission arrangements. The school is a popular and successful school and as a result it is heavily oversubscribed. The school admits children who have a statement of special educational need that names the school. It then applies its oversubscription criteria. Catholic looked after children and previously looked after children are given first priority. After that, the school scores all the applicants against eight criteria. Four of these are called over-subscription criteria and four are called other over-subscription criteria.
2. The first four criteria are:
* The extent to which the candidate and his Catholic parent (where only one parent is a Catholic) meet their obligations in respect of Mass attendance on Sundays and on Holy Days of Obligation ...... (a maximum of four points can be scored for sustained attendance over three years by the applicant and both Catholic parents or one parent if only one is a Catholic.)
* The extent to which the candidate fulfils the Church’s requirements regarding baptism. (a maximum of 4 points is scored if the applicant was baptised within 6 months of birth unless there were exceptional circumstances)
* Whether the candidate has received his first communion.( a maximum of one point is scored for this)
* Service in a Catholic Parish or in the wider Catholic Church by the candidate or a Catholic parent. (a maximum of 2 points can be scored for service of at least three years with the definition of service including: assisting in the liturgy by reading or singing in the choir, playing an instrument, altar serving or flower arranging; assisting in parish pastoral work by visiting those in need or participating in parish groups; or getting involved in wider Catholic Church activities such as assisting in or membership of organisations or groups, voluntary work by visiting or helping the sick of housebound.

The other four criteria are:

* Whether the candidate has a brother or sister at the school on the date of admission. (scores one point)
* Whether the candidate has attended the London Oratory Primary School or any other Catholic School for the whole of their primary education or their parents have fulfilled their obligation to ensure a Catholic education for their child. (scores one point)
* Whether the candidate is a sibling of a former pupil. (scores one point)
* Whether the candidate and his parents regularly attend Mass…at the London Oratory Church for a sustained period of at least three years. (scores one point)
1. The school then produces a grid that shows the scores for all the applicants against each of the criteria. It applies its first criterion (attendance at Mass) and selects all those who fully meet this criterion. From the group who fully meet this criterion the school then selects all those who fully meet the second criterion (Baptism). Then from this group the school selects all those who score maximum points for the third criterion (receipt of communion) and then applies the fourth criterion (service) to achieve a group of boys who have scored maximum points in all four of the faith criteria. In effect, the first four criteria are used to select those applicants who fully satisfy the school’s definition of a practising Catholic.
2. From this group who fully meet the first four criteria, the school uses its other four scored criteria to prioritise admission within the group. So the scoring then prioritises those who have a sibling in the school; those who have a sibling who is a former pupil; those who attended a Catholic primary school; and those who attend Mass at the London Oratory Church or combinations of these.
3. The school used distance as its tiebreaker in 2010 but since then has decided to use random allocation if there are more applicants than places available in any of the oversubscription criteria. The school has chosen to do this because it wishes to retain its admission pattern from across London and the use of distance does not allow it to do this.
4. The school provided the grid created for the 2013 admissions. There were 685 completed application forms submitted. Of these, 517 applicants fully satisfied the Mass attendance criteria, 436 applicants fully satisfied the baptism criteria, 434 applicants had taken their first communion and 271 applicants fully met the service criterion. The 271 applicants who fully met the service criterion also fully met the first three criteria and 265 of these applicants had previously attended a Catholic school. Two applicants met the Catholic looked after or previously looked after criterion.
5. The school then allocated the first two available places to the looked after or previously looked after children. Then places were allocated from among those 265 applicants who achieved maximum points on the faith criteria and who had all attended a catholic school as follows. First, 33 places were allocated to those who not only fully met the first four criteria and had attended a Catholic primary school and in addition had a sibling in the school. Second, five places were allocated to those who had attended a Catholic primary school and who had a sibling who was a former pupil or who attended the Oratory church. In this way the first 40 of the 160 available places were allocated.
6. The remaining 120 of the 160 available places were allocated by random ballot among the 225 remaining applicants whose scores were the same and who fully met the four faith criteria and who had attended a Catholic primary school but who had not scored any additional points against other criteria.
7. In its submission the school places emphasis on the need to make applications for places a predictable process, which is the reason given for using four faith measures. If, for example, the only criterion used was baptism in this particular year there would have been 436 applicants who fully satisfied this criterion from whom 120 would have been selected by random ballot. Similar numbers would apply if the diocesan advised criteria of baptism and Mass attendance were the only criteria used. The school argues that a chance of 120 out of 225 is more predictable than a chance of 120 out of 436.
8. I respect the school’s desire to make the arrangements more objective, and I agree there is a greater statistical chance of success for any child who is left in a pool of 225 rather than 436. However as places are then awarded by random allocation, I do not agree that inclusion of the service criterion makes it easier for a parent to predict whether his or her *own* child will gain a place. The school is entitled to use random allocation to fill its remaining places, and the lack of predictability

engendered by its use is not a reason for concluding that the objection to the service criterion should be upheld; but equally I do not accept that greater predictability is a point in favour of the criterion.

1. The objector argues that the service requirement is not compliant with paragraph 1.9e of the Code, which forbids the granting of priority on the basis of any practical or financial support to the school or an associated organisation, including any religious authority.
2. The school’s response to this is that it uses the criterion because of the level of oversubscription and draws attention to the process described above. It argues that the use of the service criterion allows it to reduce the numbers of applicants who fully meet its faith criteria. The school wished to have a criterion that takes account of an applicant’s and /or their family’s participation in the wider life of the church and which reflects the provisions of Canon Law that the school quotes in the arrangements. The school argues that the Catholic service described is not “practical support” for the Church but a religious activity that involves performing a duty and/or expressing dedication to the Church rather than offering practical assistance to the institution itself.
3. The school further argues that as this service is religious activity it is permitted by paragraph 1.9i of the Code which states that “… 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”.
4. I have considered whether or not I agree with the school about this reference to paragraph 1.9i. I can see that some of the activities used could be described as religious activities in the more general sense but the Code refers to “religious activities, as laid out by (in this case) the Diocesan Bishop”. The diocese, on behalf of the Diocesan Bishop, has published guidance to schools on admissions and this is where I would expect to see such religious activities laid out if they are to be designated as such for admissions purposes. However, the guidance is silent on this matter. I conclude, therefore, that such activities have not been laid out and as a result are not designated as religious activities that may be taken into account for admissions purposes and are not therefore permitted by the Code at paragraph 1.9i.
5. The objection refers to paragraph 1.9e of the Code. The school argues that its service criterion does not breach this paragraph of the Code because the activities described are not practical or financial support but are religious duties as required by Canon Law. I have considered this point and have concluded that even if the activities are duties or obligations in the religious sense, at least some of the activities described are also both practical in the dictionary sense that they are concerned with the actual doing or use of something and support in the dictionary sense of maintenance of something or someone. I do not

dispute the school’s reference to Canon Law and the desirability of Catholics undertaking service within their communities. However the Code does not allow practical support to a school or an associated organisation, in this case the Church, to be used to give priority to children when formulating admission arrangements. If I am correct in this conclusion then the school’s service criterion breaches the Code at paragraph 1.9e.

1. Having considered 1.9i and 1.9e, I looked at the diocesan view and the council view of the criterion. The diocese does not support the inclusion of the criterion and gives two main reasons for its view:
* “It is within the proper competence of the Diocesan Bishop, not the governing body to determine who is, and who is not, to be regarded as a ‘practising Catholic’; and
* Whilst such a criterion may demonstrate that certain parents and children are conscientiously practising their Catholic faith, it is not an appropriate measure of Catholic practice for admissions purposes, because it would disadvantage other, equally conscientious Catholic families, who legitimately choose to fulfil their same obligations in different ways.”
1. The council has chosen not to express a view about the use of the service criterion explaining that this is a matter for the school and the diocese.
2. The second point made by the diocese is important because it leads to the question of whether this criterion is fair.
3. The school’s service criterion requires three years’ service by an applicant or their family in order to completely fulfil the criterion. This means that a Catholic family that has chosen to fulfil their Catholic obligations in a different way must begin to think about changing their practice three years before applying for a place, which will be four years before a child is admitted, if they are to stand a chance of being included in the random ballot for a place at the school. This process will favour those parents who are good at planning ahead and who are sufficiently well organised to identify the admission criteria, who ensure that they undertake the necessary activities and who keep sufficient records to be able to evidence that they have done this. The complexity of the process does not necessarily make it unfair, but the more general question is whether it is fair for those conscientious Catholics referred to by the diocese to have to change their practice in order to gain priority for admission at the school and secondly, is it unfair for anyone to be required to be doing something for as long as four years before the time of admission in order to gain priority?
4. I am sympathetic to the school’s desire to find measures that reduce the random element in the admission arrangements. I am not

convinced that this particular criterion is a fair measure. The school argues that it is fair because it is simply measuring what Canon Law requires practising Catholics to do. The diocese argues that practising Catholics could be equally conscientious and choose to meet their obligations in other ways and in so doing would not meet the school’s criterion. The families who this applies to would feel unfairly treated either because they were unaware of the requirement until the time of application (perhaps because they did not at the time live in the London area) and by then it was too late to change their practice or because they were aware in time but did not feel that it was fair that they should have to change their practice. In principle, it feels unfair that any admission criterion should require parents to be thinking about school admissions four years ahead of the actual time of admission irrespective of the nature of the admission arrangements and contrary to requirements of paragraph 14 and 1.8 of the Code.

1. The second part of the objection is that the admission arrangements are not sufficiently clear that a child who is not a Catholic could be admitted to the school if a place is available.
2. A footnote to the arrangements does indicate that non Catholic children could be admitted to the school but the objection is about whether this is made sufficiently clear. The school’s argument is that with the current admission pattern it is unlikely that the school would use all its oversubscription criteria and have vacant places after all Catholic applicants have been admitted and for this reason it has included its reference to the admission of “children from other faiths” and “other children” within a footnote. The Code in paragraph 2.8 says that if spaces are available then any child **must** be admitted and oversubscription criteria (including faith criteria) will not be applied. I am clear that the school has stated that it could admit a child who is not a Catholic if a space was available, but it has not done so clearly enough and so I uphold this part of the objection. In correspondence following our meeting, the school has indicated its willingness to consider including the references that are currently included within this footnote as a continuation of its oversubscription criteria.
3. The third part of the objection is that the school has not had regard to the advice of the Diocesan Guidance. The school argues that while it has “had regard to” the Diocesan Guidance as required in paragraph 1.38 of the Code, it has chosen to develop its own definition of being a practising Catholic for the purposes of its admission arrangements. The school provided correspondence between the school and the diocese on this matter that argues its reasons for not following the guidance. If to “have regard to” means “to take account of but not necessarily to follow” then the correspondence provides evidence that the school has “had regard to” the diocesan advice. For this reason I do not uphold this part of the objection.

The fourth part of the objection is that the school’s website had not been changed at the time the objection was made to reflect changes agreed following the consultation period. In particular there was still a reference to cleaning in the service criterion. The changes to the website have been made and the objector is now satisfied. I uphold this part of the objection because at the time of the objection the changes had not been made, however, I recognise that this matter has now been satisfactorily resolved.

1. At the meeting I raised some other matters concerning the 2014 arrangements which I consider breach the Code. These are set out below together with the school’s responses. The school has responded to these issues positively.
2. I needed some assistance in understanding the detail of the ranking and scoring process. This was described at the meeting and followed up in correspondence with the worked example from 2013. The scoring system is complicated both in explanation and in use and as discussed above is used primarily to create a pool of applicants who fully meet the school’s defined faith criteria amongst whom the available places are allocated by random allocation once some of the pool have been prioritised by the other scoring criteria.
3. I now appreciate how the process works, but was unable to reach this understanding by simply reading the arrangements and related footnotes. Paragraph 14 of the Introduction to the Code states “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” The school has agreed to conduct a review of the wording and presentation of the arrangements in preparation for the 2015 admissions in order to explain the process it uses in a way that is more easily understood by parents. This will need to be a thorough review to ensure compliance with the Code and form the basis of the consultation on the 2015 admission arrangements.
4. One of the current oversubscription criteria makes reference to attendance at a Catholic primary school. Paragraph 1.9b does not permit this unless a school is a named feeder school. The school has agreed to remove this criterion from the 2014 arrangements.
5. The reference in the sixth form admission section to 40 boys and girls will be amended to state that “Each year the school admits 40 pupils (boys and girls) to the sixth form to avoid any possible doubt that the published admission number is 40.
6. The school has agreed to amend the reference in the sixth form arrangements to contacting schools for “information about expected performance at GCSE and suitability for an A level course” to clarify that the contact is to obtain predicted grades and not a school reference which is not permitted under paragraph 1.9g of the Code.

The Religious Inquiry form (supplementary information form) used by the school is a generic form which refers to the son as the applicant for a place. The school has agreed to replace this generic form with a specific form at each point of entry so that sons and daughters are referred to where appropriate.

1. The school must ensure that it complies with paragraphs 2.4 and 2.5 of the Code when asking for information about families and requesting signatures on any application forms. In particular, the school has agreed to amend its requirement for seeing original birth certificates at the time of application until after the offer of a place has been made when it can request no more than a short birth certificate.

Conclusion

1. The first part of the objection concerns the service criterion. I have considered the effect of paragraph 1.9i on the service criterion and concluded that the diocese has not laid out the activities referred to in the service criterion in its guidance to schools. In consequence I consider that it is likely that the criterion is not allowable under this paragraph of the Code. I then considered paragraph 1.9e of the Code and whether the activities described in the service criterion were practical support to the school or the Church as an associated organisation. While I have some sympathy with the school’s argument that these activities are a religious duty under Canon Law, it does not mean that they are not practical support in the dictionary sense of the words and which the Code does not allow an admission authority to use as a means of giving priority in admission arrangements. I then considered whether I agreed with the diocesan argument that the criterion is unfair to those who choose to meet their Catholic obligations in ways other than those described in this service criterion and I concluded that the criterion is likely to be considered to be unfair because the four year period required to fully meet the service criterion is, in principle, too long to be fair for the purpose of admission arrangements and in addition the service criterion discriminates against those who choose to meet their Catholic obligations in other ways.
2. The objector asked me to consider whether or not the service criterion breaches paragraph 1.9e of the Code. I think there is a breach of 1.9e, but even if I am wrong about that, I think there is a breach of the Code as I consider that the arrangements are unfair for the reasons given. For these reasons I uphold this part of the objection.
3. The second part of the objection is that the admission arrangements are not sufficiently clear that a child who is not a Catholic could be admitted to the school if a place is available. While I am clear that the school has stated that it could admit a child who is not a Catholic, it has not done so clearly enough and so I uphold this part of the objection.

The third part of the objection is that the school has not had regard to the advice of the Diocesan Guidance. The school argues that whilst it has “had regard to” the Diocesan Guidance as required in paragraph 1.38 of the Code, it has chosen to develop its own definition of being a practising Catholic for the purposes of its admission arrangements. The school provided correspondence between the school and the diocese on this matter as evidence of this consideration. The school has “had regard to” in the literal sense of “taking account of” and in consequence, I do not uphold this part of the objection.

1. The fourth part of the objection is that at the time of the objection the school website had not been changed to reflect changes agreed. The objector is now satisfied that the changes referred to have been changed on the website and so this is no longer being maintained as an objection. On the basis that the changes had not been made at the time the objection was made I must uphold it but I recognise that the matter is now resolved.
2. I have looked at the overall admission arrangements and raised a number of specific issues with the school that appear to breach the Code. The school may make the necessary changes to address these issues as permitted variations to the 2014 arrangements. The changes to be made are as follows:
3. One of the current oversubscription criteria makes reference to attendance at a Catholic primary school. Paragraph 1.9b does not permit this. The school has agreed to remove this reference from the 2014 arrangements.
4. The reference in the sixth form admission section to 40 boys and girls will be amended to state that “Each year the school admits 40 pupils (boys and girls) to the sixth form to avoid any possible doubt that the published admission number (PAN) is 40.
5. The school has agreed to amend the reference in the sixth form arrangements to contacting schools for “information about expected performance at GCSE and suitability for an A level course” to clarify that the contact is to obtain predicted grades and not a school reference which is not permitted by the Code.
6. The Religious Inquiry form (supplementary information form) used by the school is a generic form which refers to the son as the applicant for a place. The school has agreed to replace this generic form with a specific form at each point of entry so that sons and daughters are referred to where appropriate.
7. The school must ensure that it complies with paragraphs 2.4 and 2.5 of the Code when asking for information about families and requesting signatures on any application forms. In particular, the school has agreed to amend its requirement for seeing original birth certificates at

the time of application until after the offer of a place has been made when the Code permits it to request a short birth certificate.

1. As a wider issue, the school has agreed to conduct a review of the wording and presentation of the arrangements in order to explain the process it uses in a way that is more easily understood by parents. Given the shortage of time before arrangements must be finalised for parents’ meetings in September, the school has stated that it will undertake this as part of the 2015 admissions arrangements.

Determination

1. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for the London Oratory School determined by the Board of Governors for the London Oratory School Trust.
2. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters set out in this determination that do not conform with the requirements relating to admission arrangements.
3. 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 as quickly as possible.

Dated: 28 August 2013

Signed:

Schools Adjudicator: David Lennard Jones