

## Further comments from the British Humanist Association on the London Oratory School's admissions arrangements

23 July 2013

Case reference: ADA/2410

1. These comments are in response to those made by the London Oratory dated 22 July and circulated on 23 July 2013. We suggest it is read in conjunction with that document.

### Is the Catholic service criterion assessing "practical support" under para 1.9(e)?

2. In paragraphs 1-5 and elsewhere the Oratory set out a false dichotomy between something that is a religious activity and something that constitutes practical support for the Church. It is possible for something to be both, and indeed some of the things (though not all) in the Catholic service criterion *are* both - at no point did we suggest otherwise.
3. The point, however, is that practical support for religious organisations is not permitted by the Code, regardless of whether they are religious activities. Furthermore, children cannot be prioritised based on parents' past or current activities - with an exception to this permitting religious schools to account of religious activities as laid out by the body or person representing the religion or religious denomination.
4. With regard to paragraph 4, of course attendance at Mass and baptism traditionally come with financial contributions. We would think, however, that the Code, in prohibiting financial support, prohibits those contributions from being mandatory in order to gain admittance to a school (however rude it might be considered to decline to make them). None of this is relevant to this case, however.

### Are the religious activities ones which have been laid out by the representative authority?

5. In Paragraph 7, the Oratory asserts that '*the Diocesan Guidance recognises at A31 that its test of practising Catholic may not be enough in many cases and other criteria will be required.*' However, our reading of this paragraph is that the other criteria being referred to are to be secular criteria, such as distance from the school. This seems to be made clear in the context of the preceding paragraphs:

'Definition of 'Catholic' for the Purposes of Admission Criteria

*A12 For the purposes of admission criteria, the term 'Catholic' is taken to denote a baptised person who is in full communion with the Catholic Church, that is to say, a member of any Catholic Church that is in full communion with the See of Rome. Membership of a Catholic Church is gained by baptism in that Church. It can also be gained by other baptised Christians who are subsequently received into the Catholic Church.*

...

*A15 Membership of a Catholic Church is normally shown by a certificate of baptism from a Catholic Church or a certificate of reception into the Catholic Church.*

...

A higher test than 'Catholic'

*A22 If there is an absolute shortage of places in the locality (this will usually be acknowledged by the diocese) a higher test of 'practising Catholic' may be employed. However, when there are sufficient places in Catholic schools within the locality for all Catholic children, other criteria should be used to distribute the places available on an equitable basis.*

*A23 If a test of 'practising Catholic' is employed, the only test that is acceptable is frequency of attendance at Mass as demonstrated on the diocesan priest's reference form. It is unacceptable for schools themselves to be making judgments on pastoral matters such as Catholic practice.*

...

*A29 Under no circumstances may governing bodies receive applications and then produce a 'rank order' based on their own assessment of each applicant's Catholicity instead of using the priest's reference. Any rankings determined by reference to financial contribution, participation in parish committees, service in Church ministry in any capacity or the like are not acceptable.'*

6. Also in paragraph 7, the Oratory says that '*Para. A62 of the Guidance states that "there is no prescribed list of acceptable and unacceptable criteria". It then specifically identifies "religious observance in accordance with the rites and practices of the Church" as an example of a criterion which is generally acceptable.*' However, the absence of any prescribed list does not mean that there are prescribed criteria, as the above illustrates. Furthermore, paragraph A62 is a summary of the above, so presumably the reference to '*religious observance in accordance with the rites and practices of the Church*' is meant to be one to the religious observance set out in the preceding paragraphs (i.e. just baptism and Mass attendance).
7. In paragraph 8, the Oratory points out service through good works are required of Catholics under canon law. In response, we would point out that these activities are required of Catholic individuals and are not required of Catholic schools in admissions criteria. It would be ludicrous to assert that the overwhelming majority of Catholic schools, in having no such criterion akin to the one being debated, are therefore in breach of canon law.
8. Finally, we note that at the meeting, after Richy Thompson set out the BHA's understanding of the Diocesan guidance, Mary Ryan said that '*Richy made our case quite well at the beginning*', and proceeded to agree that the criterion is not permitted by the Code. This is consistent with the Diocese's past behaviour in previous OSA adjudications – for example in the Cardinal Vaughan case, and in the 2011 case involving Coloma Convent Girls' School.<sup>1</sup> It may be that there are individuals within the Diocese who do not agree with this, but the Diocese's own stance on the Code seems to the BHA to have been consistent over time.
9. In paragraph 10 the Oratory is once again guilty of selective quotation from a publication to support their position. The full abstract of Allen and West's paper, with part they removed highlighted in bold, is:

*'This paper explores reasons why secondary schools with a religious character have pupil intakes that are of a higher social background and ability than their secular counterparts. We show that this is especially true across all regions in England once the characteristics of the pupils living in the local neighbourhoods are taken into*

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<sup>1</sup> <http://www.education.gov.uk/schoolsadjudicator/decisions/database/a00211752/ada2146ccs>

*account. Data from the National Pupil Database and the Longitudinal Survey of Young People in England are combined to show that likely reasons for this are complex. Parents reporting a religious affiliation are more likely to be better educated, have a higher occupational class and a higher household income. **We also show that higher-income religious families are more likely to have a child at a faith school than lower-income religious families. Policy implications regarding the state-funding of faith schools are discussed.***

In other words, even given that parents reporting a religious affiliation '*are more likely to be better educated, have a higher occupational class and a higher household income*', it is still the case that '*higher-income religious families are more likely to have a child at a faith school than lower-income religious families.*' This conclusion is expanded in the full paper, which considers the former factor to be more significant than the latter but that both have a statistically significant impact. We can provide this paper upon request. That the Oratory chose to manipulate this paper is, we think, extremely regrettable.

10. With that said, we agree with the Oratory that such discussion of socio-economic selection is not relevant in the eyes of the Code.
11. With regard to the Oratory's comments in paragraphs 13 to 16, we do not think the Oratory has fully understood that our reliance on 1.38 is only to be taken in conjunction with (and indeed might be superfluous to our reliance on) 1.9.i)'s restricting a school's taking account of religious activities only to the extent that they are laid out by the body or person representing the religion or religious denomination. 1.9.i) was not in the Code in 2005, when the High Court ruled on paragraph 1.38.

### **The third complaint**

12. In paragraphs 17-19, the Oratory again seem to get confused between their admissions criteria's treatment of non-Catholics and its treatment of the narrower pool of individuals of no faith. However, to surmise, the criteria is not clear in that (almost uniquely amongst schools) it does not have a catch-all criteria at the lowest ranking covering 'Any other applicant'. As acknowledged in the meeting, this might perhaps be a point of clarity rather than a more fundamental breach of the Code.
13. We would also reiterate that a school's criteria needs to be clear even *if* a particular applicant has no chance, in the foreseeable future, of gaining admittance. If the Oratory is worried about offering false hope to those of no religion (which certainly is not something we would want to see) then perhaps the Oratory could instead specify how many applicants were admitted under each of the criteria in previous years.

### **Legal admissibility of the objection**

14. We do not intend to dwell upon this, instead continuing to rely on our previous comments, but in response to paragraph 23, our concern (as previously stated) is 'The promotion of equality and non-discrimination and the protection of human rights as defined in international instruments to which the United Kingdom is party, in each case in particular as relates to religion and belief'. Therefore we would not want to see Catholics discriminating against other Catholics any more than we would want to see Catholics discriminating against the non-religious.