

Ref: APV/18771.13

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4 October 2013

Dear Sirs

Objection to Admissions Arrangements of the London Oratory School
Case Reference: ADA/2410

We note your letter before claim dated 27 September 2013 on behalf of the London Oratory School ('the School') and our addition to the proposed case as an interested party. Further correspondence should be addressed to Richy Thompson at the British Humanist Association ('the BHA').

This is our interim response to that letter, although we do not in this letter challenge the claim directly and would wish to see the Office of the Schools Adjudicator's response before deciding whether we wish to write a further letter that does so. However, for the reasons we shall set out, we believe that such a delay is reasonable as we believe that the timetable proposed in your letter is unfeasibly short: it is impossible to resolve this case prior to the application deadline for first form (11+) on 25 October.

We therefore wish to make two comments at this stage, namely that (i) the timings proposed for this case are infeasible; and (ii) the School has failed to comply with the Schools Adjudicator's decision (either full stop or alternatively within the timeframe required by the Admissions Code), not just with regard to the Catholic service criterion but also elsewhere.

In order to make these comments we must consider what the Schools Adjudicator ruled, what the school's revised criteria say now, and the chronology of events that have taken place since. We also attach the school's criteria at the time of their complaint, and as of today.

The adjudicator's ruling

In his ruling of 28 August, the Schools Adjudicator seemed to us to find the following breaches of the School Admissions Code:

1. The school's 'Service in any Catholic Parish or in the wider Catholic Church' criterion (criterion (4)/footnote [4]) was determined to constitute practical support to the Church (disallowed by paragraph 1.9e of the Admissions Code – paragraph 31 of the ruling), as well as being unfair (disallowed by paragraphs 1.4 and 1.8 of the Code – paragraph 36 of the ruling), and therefore has to be removed in its entirety.
2. The school's criteria (in particular footnote [1]) were not sufficiently clear that children whose families have no religion could be admitted if the school was not sufficiently oversubscribed (paragraph 2.8 of the Code, and 38 of the ruling). They seem to only allow

for Catholics, then 'members of the Church of England; members of other Christian denominations; members of non-Christian faiths'.

3. The school's admissions criteria were not easily understood in terms of how the ranking and scoring process works, and need a major redrafting on this front (paragraph 14 of the Code and 42 of the ruling). This needed to be complied with for 2015, i.e. by 15 April 2014.
4. The school gives priority to pupils attending Catholic primary schools, but does not name which Catholic primary schools specifically it means. Feeder schools have to be individually named (paragraph 1.9b of the Code and 43 of the ruling).
5. In two separate places, the school refers to boys/sons when it should also refer to girls/daughters (as girls can be admitted to the school in the sixth form) (paragraphs 44-45 of the ruling).
6. The school's criteria implied that for applicants to sixth form they would seek a reference from the previous school, instead of simply asking for expected GCSE results in order to decide whether applicants will be suitable for the relevant A Level courses – seeking a reference is not allowed (paragraph 1.9g of the Code and 45 of the ruling).
7. The school asks both parents to sign the supplementary information form, and to see birth certificates (disallowed by paragraphs 2.4 and 2.5 of the Code respectively, paragraph 46 of the ruling).

The school was required to 'revise its admission arrangements as quickly as possible', as per s88K(2) of the School Standards and Framework Act 1998 ('SSFA 1998') and paragraph 3.1 of the School Admissions Code; as per the proposed schedule in your letter, this is agreed to be ahead of applications received from 25 October 2013, apart from in the case of no 3, which is explicitly stated to be from the following year.

The revised criteria

With respect to 1-7 in the preceding section, the school's revised criteria (as of the date of this letter) have made the following changes:

1. Nothing has changed here.
2. Nothing has changed here.
3. Nothing has changed here (although nothing needs to have changed just yet).
4. The relevant criteria here used to say 'Whether the candidate has attended the London Oratory Primary School or any other Catholic School for the whole of their primary education or the candidate's parent(s) have fulfilled their obligation to ensure a Catholic education for their child.' An accompanying footnote said 'The obligation mentioned is set out in canon 798 (CCEO 633). This can be demonstrated to the governors in a number of ways including evidence that: (a) the boy has attended a Catholic school for the whole of his statutory education; or (b) formal provision has been made for the boy's Catholic education outside school at any stage where he was unable to attend a Catholic school. This could be, for example, participation in a programme run by a local parish.'

The school has removed the portion saying 'the candidate has attended the London Oratory Primary School or any other Catholic School for the whole of their primary education or'.

What is left in place therefore still gives priority to boys who have attended Catholic primary schools, by virtue of part (a) of the footnote. It is clear therefore that the school continues to take into account any previous schools attended, and so has failed to comply with the ruling at the Code.

5. This has been complied with.
6. This has been complied with.

7. Nothing has changed with respect to the two signatures. On birth certificates, the school has changed its request for a 'birth certificate' to 'documentary evidence of name and date of birth of candidate'. It is unclear as to whether this is compliant with the decision/Code as that *seems* to suggest that such proof cannot be requested until a place can be offered.

In other words, the following portions of the Adjudicator's decision have not been complied with:

1. The school's 'Service in any Catholic Parish or in the wider Catholic Church' criterion (criterion (4)/footnote [4]) was determined to constitute practical support to the Church (disallowed by paragraph 1.9e of the Admissions Code – paragraph 31 of the ruling), as well as being unfair (disallowed by paragraphs 14 and 1.8 of the Code – paragraph 36 of the ruling), and therefore has to be removed in its entirety.
2. The school's criteria (in particular footnote [1]) were not sufficiently clear that children whose families have no religion could be admitted if the school was not sufficiently oversubscribed (paragraph 2.8 of the Code, and 38 of the ruling). They seem to only allow for Catholics, then 'members of the Church of England; members of other Christian denominations; members of non-Christian faiths'.
4. The school gives priority to pupils attending Catholic primary schools, but does not name which Catholic primary schools specifically it means. Feeder schools have to be individually named (paragraph 1.9b of the Code and 43 of the ruling).
7. The school asks both parents to sign the supplementary information form (disallowed by paragraph 2.4 of the Code respectively, paragraph 46 of the ruling).

We would therefore argue that the school is currently in breach of section 88K(2) of SSFA 1998 in failing to comply with the ruling; or, alternatively, is in breach of paragraph 3.1 of the Admissions Code, for failing to comply with it as quickly as possible.

Chronology

We set out the following chronology:

1. On 8 April the BHA complained about the School's admissions arrangements.
2. On 17 July the School, the BHA, the Catholic Diocese of Westminster, London Borough of Hammersmith and Fulham ('the Borough') and Schools Adjudicator met at the school.
3. On 28 August, the Schools Adjudicator ruled against the School.
4. On 29 August, the Borough published 'Moving on up: Making the transfer to secondary school in Hammersmith & Fulham in September 2014'.¹ This states that 'The information in this booklet is correct at time of publication. Please note that at the time this booklet was printed the admissions criteria were subject to an adjudicator's review. You are advised to check the school's website for any update.'
5. On 30 August, the school published the revised admissions criteria.²
6. At some point between 28 August and 30 September, the School added a statement to its website that '*As with all schools, our arrangements for selecting pupils are subject to revision by the Schools Adjudicator. On 28th August after a challenge by The Humanist Society supported by the Diocese of Westminster, the Adjudicator decided that the Catholic service oversubscription criterion should be removed. The School is disappointed by this ruling as well as by its late timing. It is considering whether it has grounds for a legal challenge and if not, precisely what steps it should take to comply with the Adjudicator's decision. However,*

¹ Available at http://www.lbhf.gov.uk/Images/moving%20on%20up%202014_tcm21-182723.pdf. 29 August is the date that the PDF was created.

² Again, 30 August is the date the PDF was created.

*unless notified to the contrary parents should assume that the Catholic service criterion will not be applied to candidates for admission in 2014.*³

7. On 27 September, some thirty days after the ruling, solicitors acting on behalf of the School sent a letter pursuant to the pre-action protocol for judicial review, challenging specifically the ruling on the Catholic service criterion (our no 1) and not the other areas of the ruling the School has failed to comply with. This asked for responses in seven days, and further stated a hope that the whole case could be resolved prior to the first form closing date for applications, i.e. 25 October – a further twenty-one days later.
8. At some point between 30 September and 4 October, the School removed the statement quoted in point 5 and replaced it with one saying ‘Applicants are advised that the school’s admission arrangements for 2014 will be as published’: seemingly deciding that it would not be able to comply with the ruling in time and therefore doesn’t have to.

Therefore, as well as seemingly deciding not to comply with the Schools Adjudicator’s decision, the School has also proposed an unfeasibly short time of 21 days to conclude this case, having taken 30 days to write the pre-action letter. We would suggest that if a case were to occur it would need a longer timeframe.

In order not to further break the Admissions Code by continuing to fail to comply with a ruling, we would further suggest that the School must immediately revise its admissions arrangements to be compliant with the decision and the Code, at least for the time being.

Yours faithfully,

British Humanist Association

Cc

Office of the Schools Adjudicator
Diocese of Westminster
London Borough of Hammersmith and Fulham

³ This was on pages <http://www.london-oratory.org/tlos/htdocs/content.asp?cat=8> and <http://www.london-oratory.org/tlos/htdocs/content.asp?cat=8&sub=105> and the BHA has saved copies of the pages. You can also see frozen versions of a Google cache of the pages from 23 September at <http://www.freezepage.com/1380898570PBXIQPTT> and <http://www.freezepage.com/1380898618PVYSSLFKFJ>