

## Bristol Cathedral Choir School – overview of chorister objections

[The following paper was submitted after the Bristol Cathedral Choir School case restarted for the final time, and summarises previous correspondence we submitted related to the priority given to choristers in the school’s admissions policy.]

19 January 2015

Case reference: ADA/2772 / ADA/2832

The first four of FAC’s objections to the OSA were as follows:

1. 1.9e) (criteria b – gives preference on the basis of practical support given to the church. We would argue that parents are giving practical support by allowing their children to take part in the choir)
2. 14/1.8 (criteria b – we think it is unfair/not reasonable to give priority to children who are choristers, something that some children will plainly not have the time, means or parental support to be, or may not have the ability to pass the audition or make satisfactory progress<sup>1</sup>)
3. 1.9d) (criteria b – as ‘To become a Probationer, children must first pass an audition’ and ‘Probationers must make satisfactory progress, as judged by the Cathedral Director of Music.’)<sup>2</sup>
4. We would also invite the adjudicator to consider whether criteria b is permitted under 1.9i). We have not seen the diocesan guidance so don’t know if it has an exemption for these places

The first thing to say is that none of these issues were considered as part of the case that concluded on 5 March 2014 (ADA/2573).<sup>3</sup> The objector in that case argued that more than 10 per cent selection on aptitude was occurring (breaking paragraph 1.24 of the Code). This is different from any of the four arguments above.

With that said, over the course of Dr Slater’s deliberations it was also discussed as to whether or not this is, in fact, selection by aptitude (in spite of the March 2014 OSA decision). I will address this as well.

- 1. 1.9e) (criteria b – gives preference on the basis of practical support given to the church. We would argue that parents are giving practical support by allowing their children to take part in the choir)**

Paragraph 1.9e) says that admissions authorities 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’.

Probationers are expected to attend the choir three times a week (every Monday and Tuesday, every other Saturday for those in year six, and every other Sunday). It is very burdensome for

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<sup>1</sup> As specified at <http://www.bccs.bristol.sch.uk/Home/Prospectus/Choir-School/Becoming-a-Chorister>

<sup>2</sup> Ibid.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/293519/ada2573\\_bristol\\_cathedral\\_choir\\_bristol\\_-\\_5\\_march\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293519/ada2573_bristol_cathedral_choir_bristol_-_5_march_2014.pdf)

parents to have to provide or arrange transport for their children to and from all those rehearsals. By providing such transport, parents of choristers are supporting the church, and given that transport is a goods that someone can buy, this support is plainly practical in nature. Indeed, the chorister prospectus opens by saying, 'BECOMING A CHORISTER in a Cathedral Choir is a big commitment. It is one which will demand a lot of your child's time and energy, and your own as well.'

In an email we sent on 11 November we suggested that we were content for this issue to not be considered as part of the case. However it was only on 5 December that the School sent us the Choir's prospectus, showing the level of commitment required. Furthermore, at the meeting arranged by Dr Slater one of the representatives of the school queried this himself. We therefore ask that it is considered as an issue.

**3. 1.9d) (criteria b – as 'To become a Probationer, children must first pass an audition' and 'Probationers must make satisfactory progress, as judged by the Cathedral Director of Music.')**<sup>4</sup>

I have decided to consider the third of our four issues before the second. There are several questions that must be asked here, namely: Is selection occurring? If so, is the school selecting? Is the selection on the basis of faith, ability or aptitude? Did the Secretary of State give his consent for this in 2008? And finally, what do the other state-funded cathedral choir schools do?

Is selection occurring? The chorister prospectus states, 'Admission to Probationer Chorister Programme: The Cathedral will apply the standard voice aptitude trial before admission to be a probationer'. Similarly, the school's website says 'To become a Probationer, children must first pass an audition'.<sup>5</sup> The school's oversubscription criteria then states as criterion b that 'Bristol Cathedral Choir School will admit up to 8 pupils of the Year 7 intake as a demonstration of faith based on their membership of the Probationer Chorister programme at Bristol Cathedral', with priority 'based on attendance of the number of sessions (rehearsals and services) expressed as a percentage of the number held during the probationer period.'

Therefore two things are happening: children are being admitted into the choir on the basis of the 'voice aptitude trial'/'audition', and then being prioritised for the eight places on the basis of rates of attendance. The first of these two is clearly a form of selection, so yes, selection is occurring. Indeed, in December 2014 the school circulated a document titled 'The Selection of Choristers for Bristol Cathedral Choir'.

Furthermore we would submit that the importance of this selection and unimportance of attendance is heightened when one notes that 'The Selection of Choristers for Bristol Cathedral Choir' states that 'The Master of the Choristers will hear as many children as apply and select the eight children achieving the highest marks in the audition.' In other words, the number of children being admitted to the choir each year matches the number of places allocated under criterion b.

Is the school selecting? In the meeting convened by Dr Slater the school argued that it was the cathedral, not the school itself, that is selecting. However we would submit that this is immaterial – the school is selecting, just doing so indirectly.

Imagine if a school is prioritising pupils who pass an ability test set by some third party. Bristol Cathedral Choir School's argument is effectively equivalent to saying that this fictional school is not

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<sup>4</sup> Ibid.

<sup>5</sup> <http://www.bccs.bristol.sch.uk/Home/Prospectus/Choir-School/Becoming-a-Chorister>

selecting, when it plainly is. The fact that someone else is doing the selecting upon which the school relies is plainly immaterial.

Is the selection on the basis of faith, ability or aptitude? The school has argued that it is only prioritising on the basis of faith. The first thing to note is that these three are not mutually exclusive – it is possible that the selection of choristers is more than one form of selection. Indeed we would not dispute the fact that the school is selecting on the basis of faith.

If the school is also selecting on the basis of ability or aptitude then that would not be allowed, under paragraphs 1.9d) and 1.24 of the Code, respectively. Our objection says the former is occurring. The ‘Musical tests pdf’ supplied by the school on 10 December seems to support this as it appears that being able to read sheet music is a requirement. ‘The Selection of Choristers for Bristol Cathedral Choir’ document also says ‘A prospective chorister will also be asked to read a portion of a psalm (BCP) (unprepared) to assess their coping with an unfamiliar text using some archaic language.’ which seems to be an English ability test.

On the other hand, the Cathedral itself, in ‘The Selection of Choristers for Bristol Cathedral Choir’, describes the test as an aptitude test, writing:

‘The audition, which consists of tests designed to assess musical aptitude, is conducted in the Cathedral Song School by two members of the Cathedral Music Department, almost always the Master of the Choristers and his Assistant. The child is not accompanied by a parent at this time, though they are in close proximity. The Song School piano is the means of giving the musical tests, and accompanying the chosen song. Parents are asked to ensure the provision of a score for the chosen song for the purposes of accompanying.’

The chorister prospectus also describes the selection as a ‘voice aptitude trial’.

It therefore seems to us that selection by both ability and aptitude is occurring. The latter contradicts the March 2014 decision, but it is not apparent that the adjudicator in this case looked into the process by which the selection occurs or saw any of the documents we are now quoting from.

The school could, of course, set aside eight places a year from its 10% music aptitude allocation (under criterion c) to be able to continue to select choristers, should it wishes, although this may not get around our first and second objections.

Did the Secretary of State give his consent for this in 2008? The school has repeatedly contended that the Secretary of State gave his consent for the wording in 2008 as part of the school’s funding agreement and therefore it is permitted by the Code.

There are several issues here. First it is not clear that the SoS gave such consent. The funding agreement, signed in March 2008 and for operation from 2009-10, does not give any priority to choristers at all.<sup>6</sup> The March 2014 adjudication confirms this in saying ‘The criterion was introduced following receipt of confirmation of the faith designation at the end of September 2008 and after subsequent consultation.’

Second, even if such consent was given, the Code has changed since so compliance then does not imply compliance now. Third, even if such consent was given, that does not mean that the giving of

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<sup>6</sup> <http://www.education.gov.uk/cgi-bin/schools/performance/school.pl?urn=135575&downloadac=pdf&numfile=0>

such priority was compliant then, never mind about now. The job of the adjudicator is to impartially assess the compliance of admissions policies with the Code – in this context, the SoS's consent is immaterial.

What do the other state-funded cathedral choir schools do? In the meeting arranged by Dr Slater, Neil Blundell said that the four other state-funded cathedral choir schools were worried about the precedent this decision would set, but admitted to being unsure as to whether any other schools similarly select.

To quote our email of 19 December:

In summary, three of the four schools give priority to choristers with the fourth selecting on the basis of musical aptitude. In all four cases it appears (and in two cases it is explicitly confirmed) that this is pre-existing partial selection by a school that was selecting in this way as a maintained school in 1997/98, and is therefore permitted through section 100 of the School Standards and Framework Act 1998 (although there might be some issues with whether or not the selection is 'partial'). This route is not open to BCCS because it was a private school before 2008. Furthermore, contrary to what was implied in the meeting, the admissions arrangements signed by the Secretary of State in [the school's funding agreement](#) do not include selection of choristers, so it is not clear that such selection has continuously existed since that time.

In detail, two of the four schools, the London Oratory School and St Edward's College, Liverpool, are Catholic. The [London Oratory](#) selects all places on the basis of faith. Its year 3 PAN is 20 and its year 7 PAN is 160. All 20 places at year three are subject to a general ability test and a musical audition that appears to test aptitude, while up to ten of the places are offered to choristers who pass a choral aptitude test as well. The school's funding agreement makes clear that this is pre-existing partial selection that has existed since 1997/98 and, the school would argue, is therefore allowed to continue (as per footnote 21 and paras 1.21-23 of the Code). The Code only refers to pre-existing selection by ability so the Oratory is out of step here but the statute (s100 SSFA 1998) refers to both ability and aptitude. The statute also makes clear that in 1997/98 the school had to be maintained, so BCCS would not be covered by this exception to the prohibition on selection as at that time it was independent. The only question about the Oratory's arrangements that remains, in my view, is the fact that it is not partial selection but for years 3-6 is full selection. But that is a question for another day.

[St Edward's](#) also selects all 150 places on the basis of faith, and gives highest priority to choristers. There is no limit on the number of places that may be given to choristers, other than the fact that the school also selects 10% of children on the basis of musical aptitude. Between these two processes this again does not look like partial selection but could be full selection. The only requirement for a chorister place is simply being to be a chorister at the date of admission. It is not specified how one becomes a chorister. This practice could date back to 1997/98, although the funding agreement does not make clear whether or not this is the case.

The remaining two, The King's School, Peterborough and The Minster School, Southwell, are Anglican. [The King's School](#) admits 15 pupils at year 3 and 135 more at year seven. All of the 15 places are selected on the basis of faith, with 9 going to choristers. The 9 choristers must pass a voice trial but there are no attendance requirements. Of the year seven places, 120 are selected on the basis of faith, 12 are selected on the basis of academic ability and 3 on the basis of musical ability. This is probably also pre-existing partial selection on the basis of

ability or aptitude. However, the funding agreement omits the clause specifying that this is the case. This implies it might not be, but could just be an error.

[The Minster School](#) has a PAN of 5 pupils at year 3 (although confusingly appears to have 10 pupils per year for years 3-6), with all being selected on the basis of a musical aptitude test. This is identified in the policy as pre-existing selection dating back to 1997/98. At year 7, the PAN is 225, with 55 places being selected on the basis of faith. Again, for years 3-6 this looks like full, not partial, selection, but this is a separate question to the one BCCS is facing. There is no specific selection of choristers.

The common theme, therefore, is that all of the other schools probably can, and in two cases explicitly do, rely on the rules enabling pre-existing partial selection since before 1997/98. But, as I have noted above, BCCS cannot do this as it was not a state school at that time.

Compounding this fact is that the admissions arrangements in [BCCS's funding agreement](#), signed in March 2008 and for operation from 2009-10, does not give any priority to choristers at all - so it is clearly not pre-existing selection that was approved by the Secretary of State at that time. (This appears to contradict what was implied in the meeting.) However [by February 2009](#) such a clause had been inserted into the arrangements.

**2. 14/1.8 (criteria b – we think it is unfair/not reasonable to give priority to children who are choristers, something that some children will plainly not have the time, means or parental support to be, or may not have the ability to pass the audition or make satisfactory progress<sup>7</sup>)**

Paragraph 14 requires oversubscription criteria to be fair and paragraph 1.8 requires them to be reasonable. We would submit that the priority given to choristers is not fair and reasonable, firstly because of the highly burdensome nature of meeting the criteria, as per our first objection above; and secondly, if such selection *is purely* on the basis of faith, as the school says, then this does not seem to fairly reflect the fact that some people may wish to demonstrate their religious commitment in other, more common and equally determined ways, and yet the school does not take account of that. Not everyone has an interest in music or will pass the audition. Those of equal faith without such an interest or who do not pass the audition would be being denied the same opportunities to access the school in spite of their equal faith commitment.

**4. We would also invite the adjudicator to consider whether criteria b is permitted under 1.9i). We have not seen the diocesan guidance so don't know if it has an exemption for these places**

We are now confident that this objection is correct. In the meeting organised by Dr Slater the diocese provided admissions guidance that was produced on 19 November. Therefore at the commencement of the case no such guidance existed and so the school was, at that time, in breach of the Code. However this will not be a problem beyond this case as the guidance permits priority being given on the basis of serving as a chorister.

**Further issues**

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<sup>7</sup> As specified at <http://www.bccs.bristol.sch.uk/Home/Prospectus/Choir-School/Becoming-a-Chorister>

Finally, in our email of 5 December, we raised a number of further issues that are raised by the chorister programme and related documents provided by the school:

It's interesting to note that "The Master of the Choristers will hear as many children as apply and select the eight children achieving the highest marks in the audition." Given that this matches the number of places available in the school's oversubscription criteria, what role does level of attendance play in deciding which pupils are admitted? Are there ever more than eight children admitted to the probationer programme?

Presumably if children drop below a certain level of attendance then they would be removed from the choir - what level of attendance is this? If a child leaves, is a replacement child sought, and if so, how?

The prospectus says "The choir consists of around 28 choristers (14 boys and 14 girls), all of whom are educated at Bristol Cathedral Choir School". Presumably this means 28 full, not probationer, choristers. But if choristers stay in the choir through years 7-9, that comes to 24 choristers. Where do the four extra choristers come from?

How is the balance of boys and girls assured? Does the cathedral admit four probationers of each gender each year, or does it 'plan ahead' by looking at the current gender composition of years six and seven, or does it simply aim for 14 children of each gender but then take the best applicants...?

The last of these issues raises questions about gender discrimination under the Equality Act 2010.