

DETERMINATION

Case reference: ADA/002456

Objector: Somerset County Council

Admission Authority: The Governing Body of Bishop Henderson Church of England Voluntary Aided Primary School, Taunton

Date of decision: 22 August 2013

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 for Bishop Henderson Church of England Voluntary Aided Primary School, Somerset, for 2014.

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 Somerset County Council, the local authority (the LA), the objector, about the admission arrangements (the arrangements) for Bishop Henderson Church of England VA Primary School, Taunton (the school), a voluntary aided primary school for 4 - 11 year olds for September 2014. The objection is to:
 - a. the inclusion within the school's oversubscription criteria of an element of priority for children of UK service personnel or crown servants, and
 - b. the sentence in the admission arrangements which states that: "The Governors Admission Committee will consider all applications received for the Reception Year Group in accordance with these admission arrangements and places will normally be offered until the Published Admission Number (PAN) is reached".

Jurisdiction

2. 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 20 June

2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection dated 20 June 2013;
 - b. school's response to the objection and supporting documents dated 23 July 2013;
 - c. the response of the Diocese of Bath and Wells (the diocese) which is the faith body for the school dated 23 July 2013 to the objection;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - h. a copy of the determined arrangements.

The Objection

5. The LA is objecting to two aspects of the school's arrangements. The first of these is that the school includes as the second criterion of its oversubscription criteria priority for children whose parent or guardian is a serving member of the British armed forces or retiring from the armed forces, or a crown servant. The LA believes that this is contrary to paragraph 1.9f of the Code which states that admission authorities "**must not** give priority to children according to the occupational, marital, financial or educational status of parents applying (though children of staff at the school may be prioritised in arrangements)."
6. The second element of the objection is to the sentence in 1.3 of the admission arrangements stating: "The Governors Admission Committee will consider all applications received for the Reception Year Group in accordance with these admission arrangements and places will normally be offered until the Published Admission Number is reached". The LA believes that this provision is contrary to the provisions in paragraphs 15 d, 1.6, 2.8 and 2.11 of the Code. Paragraph 15 d provides that, "in a normal admissions round, if a school is undersubscribed, any parent that applies **must** be offered a place." The other paragraphs quoted give more details of this requirement and what it means in terms of oversubscription criteria and their application and the consideration

by admission authorities of applications for places in a normal admissions round.

Background

7. The school has a PAN of 60. The school was not oversubscribed in 2012. The school's oversubscription criteria for 2014 can be summarised as:
 - a. Looked after and previously looked after children;
 - b. Children whose parent or guardian is a serving member of the British Armed Forces or retiring from the Armed Forces, or a crown servant;
 - c. Children with an older sibling at the school at the time of admission;
 - d. Children who themselves attend, or whose parent/carer attends, a service of worship at St George's Church, Wilton, or St Michael's Church, Galmington, on at least one day per month and have attended for the previous six consecutive months prior to application;
 - e. Children living within the designated school catchment area;
 - f. Children living within a half-mile radius of the school's front door and not already offered a place under the catchment criterion;
 - g. Children who themselves attend, or whose parent/carer attends, a service of worship at another place of Christian worship on at least one day per month and have attended for the previous six consecutive months prior to application;
 - h. Children whose parent or guardian is a permanent member of the school staff who has been employed at the school for a minimum period of two years prior to application; and
 - i. Children living outside the catchment area and outside the half-mile radius of the school, and not satisfying a higher criterion.
8. The criterion to give priority to children whose parent or guardian is a serving member of the British Armed Forces or retiring from the Armed Forces, or a crown servant was introduced for the first time at the school for the 2014 admissions round.

9. As is required by the provisions of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)(England) Regulations 2012 (the regulations) relating to proposed changes to admission arrangements, the school consulted on the proposed arrangements. The consultation began on 21 December 2012 and ended on 22 February 2013. It thus exceeded the minimum required period of eight weeks. The school has told me that it received no comments during the consultation period. The governing body determined their arrangements for 2014 on 27 March 2013 and posted them on the school's website on 15 April 2014.

Consideration of Factors

10. I shall deal first with the priority in the oversubscription criteria given to children whose parent or guardian is a serving member of the British armed forces or retiring from the armed forces, or a crown servant.
11. The school has provided me with a detailed and cogent explanation of its reasons for introducing this criterion for 2014. It is clear to me that the school has – as it says it does – taken its responsibilities as an admission authority seriously. I quote below from the explanation the school gave to me in its letter of 23 July:

“The first instinct was not to include any specific reference on the basis that this might contravene the Admissions Code. However, there was a strong draw to meet the needs of the local community and uncertain whether this would constitute prioritisation by employment (after all children of school staff are prioritised), the governors were eventually guided to include a prioritisation because of several key factors:

- *The requirement to recognise and make suitable provision for Service families across the local area.*
- *40 Commando is located on the outskirts of Taunton and there is a regular demand from Service families for places at Taunton schools within a reasonable distance of the base. Nine children are currently on roll at this school and other schools are in a similar position. We are also within a mile of the local reservist headquarters of 6 Battalion the Rifles and are a commuter town for armed forces personnel working at RNAS Yeovilton.*
- *40 Commando works very closely with The Fledglings Children's Centre, on the school site – operated by Barnardo's - and other organisations very local to the school. With children of Service families attending these settings, there is an expectation of gaining a place with siblings and friends at the local schools. This demand for school places is expected to increase in the future.*
- *Suitable support for children of Service families has been formally*

identified as part of 'School Improvement' and the school received a grant of £58,000 from the Armed Forces Community Covenant Scheme to enhance opportunities for armed forces families to integrate better within the school and local community.

- *Local appeal panels tend to readily uphold appeals for children of Service families*
- *The Local Authority example: Somerset Local Authority 2013/14 published Admission Arrangements includes a clear prioritisation for children of Service families. This has not been removed from the oversubscription criteria on the basis that it is unlawful and was applied for September 2013 admissions and as far as the governors are aware will continue to apply from September 2013 until 31 August 2014.*

This last point is particularly important. Although it is understood that the Local Authority has removed the criterion from Community and Voluntary Controlled school arrangements for 2014/15, the opinion was that, if it was an unlawful inclusion, the LA would also have removed this from their 2013/14 published arrangements following the introduction of the 2012 School Admissions Code.

There were no comments raised by the LA during the Bishop Henderson governors' 2014/15 Admission Consultation period and so it was deemed lawful to continue including this prioritisation."

12. The LA for its part acknowledges that the oversubscription arrangements for a number of schools for which it is the admission authority contained an oversubscription criterion for admissions in 2013 which gave an element of priority to Children of UK service personnel and crown servants. (I take it as read that "UK service personnel" and "British armed forces" are intended to mean the same thing.)
13. The LA has told me that it removed this criterion from the arrangements for those schools for 2014 because advice was given to the LA's Admissions and Entitlement Manager by its Community Governance Department that this criterion might not conform to the Code. The LA has also told me that no child was admitted to any voluntary controlled or community school under this criterion for the September 2013 intake and subject to my determination any reference to Children of UK service personnel will be removed from the LA in-year oversubscription criteria for 2013/14.
14. The LA has also explained that the concern that the criterion might not conform to the Code was only raised with the relevant staff late in the process for determining arrangements. The implication is that this is why the LA did not object when Bishop Henderson consulted on its proposed new arrangements. The LA has pointed out it did raise its concerns about the introduction of this criterion with the school on 1 March. The LA says that the school referred to what the meeting describes as a "generic query [from the LA] regarding children from service families, but after the deadline". The LA states that the governing body did not respond to its concerns; the school

says that it did. In any event, the school determined its arrangements including the criterion concerning children of UK Armed Forces, those retiring from the Armed Forces and crown servants.

15. The admissions Code sets out both key principles and specific requirements and prohibitions. In, for example, determining whether a particular set of arrangements meet test of fairness, an admission authority – or an adjudicator – must consider whether they are fair in the circumstances of the school. In the case of specific requirements or prohibitions, the test is different: the requirement is met or it is not; the prohibition is complied with or it is not. A parent’s being a “serving member of the British Armed Forces or retiring from the armed forces, or a crown servant” clearly relates to that person’s occupational status. Giving priority on this basis is a breach of paragraph 1.9f of the Code.
16. The Code does include particular provision for children of UK service personnel and crown servants in paragraph 2.18 of Section 2: Applications and Offers. This paragraph provides that admission authorities **must** treat such children who are moving to an area with families returning from service overseas as if they were already resident in the area for the purposes of applying oversubscription criteria. It also provides that admission authorities **must** ensure that arrangements in their area support the Government’s commitment to removing disadvantage for service children.
17. I can see that this is what Bishop Henderson Primary School is seeking to do. I take full account of the points made in the school’s response to the objection. However, this cannot extend to having arrangements that do not conform to the Code. The Code allows priority on the basis of parental occupation in one circumstance only and that is for children of staff at the school. This is explicitly included at paragraph 1.9 f of the Code. There is no such explicit provision for children of UK service personnel and crown servants and I therefore find that the school’s arrangements in this regard do not conform to the Code.
18. I turn now to the second aspect of the objection. The LA objected to the statement in the admission arrangements that: “The Governors Admission Committee will consider all applications received for the Reception Year Group in accordance with these admission arrangements and places will normally be offered until the Published Admission Number is reached”.
19. The LA argues that the PAN is a legal limit and places **must** be offered up to this number. The LA quotes paragraphs 15 d, 1.6, 2.8 and 2.11 of the Code in support of its objection.
20. The Act and the Code require that admission authorities set an admission number for each “relevant age group” which is the age group at which pupils are normally admitted to the school. Bishop Henderson has one such age group and that is its Reception (YR) age group. It is this age group that the PAN applies to and this school has a PAN in relation to that age group only. As the LA argues, the PAN is a legal limit and the paragraphs of the Code

referred to by the LA make very clear that places must be offered up to that limit if there is demand for them.

21. It is also clear to me that the LA is objecting to the use of the word “normally” in relation to admission to YR and not in relation to admissions to other year groups. I draw attention to this for two reasons, both of which flow from the school’s response to the objection.
22. In its response, the school said that: “The objection raised by Somerset Local Authority is based on the governors’ inclusion of the word ‘normally’ relating to the allocation of places up to the Published Admission Number (PAN) for the year of entry and the admission limit set for all other year groups.” This is not, in my view, the case: as stated above I am clear that the LA is objecting only in relation to YR which – in the school’s words – is the year of entry.
23. The school also maintained that in relation to YR, its arrangements stated: “The PAN set for the 2014/15 academic year is **60**. The governors’ Admissions Committee will consider all applications received for Reception in accordance with these admission arrangements **and places will be offered until the PAN is reached**, at which point the governors will consider refusing all other applications”. The bold emphasis was added by the school in its response. This is, in fact, not quite what the admission arrangements published on the school’s website do say. The relevant section of the arrangements published on the website and provided to me actually says: “The Governors Admission Committee will consider all applications received for the Reception Year Group in accordance with these admission arrangements and places will normally be offered until the Published Admission Number is reached”.
24. The inclusion or not of the word “normally” in this paragraph is the difference between arrangements that conform to the Code and arrangements that do not. I accordingly find that the arrangements do not conform to the Code in relation to the requirement to admit up to the PAN in the normal year of entry where there is demand for places.
25. I do appreciate that the school is aware of the legal requirements. Indeed, its response also said the governors “fully respect the need to provide places up to the PAN for new intake to Reception every September”. However, this is not what they have provided for in their determined arrangements.
26. The school in its response and the diocese in its comments supporting the school drew attention to the fact that the PAN only applies in relation to the normal year of entry and to the scope for admission authorities to refuse a child a place in other year groups in certain circumstances. It is the case that the Code does allow for this, but as this was not the subject of the objection, I make no further reference to it here. The diocese also argued that the PAN did not in fact apply to the normal year of entry once the academic year had commenced. The Code is, in fact, silent on this precise point, although paragraph 2.14 deals with the requirement that admission authorities **must** maintain a clear, fair and objective waiting list for at least the first term of such

years and that such a waiting list must operate in accordance with the published oversubscription criteria. However, as the school has stated in its response to the objection that its intention is to admit up to PAN in YR, I have not considered this issue further.

27. Finally, in its response the school questioned the LA's inclusion of a reference to paragraph 2.11 of the Code in its objection. That paragraph of the Code is concerned with the duty on the LA – in administering its co-ordinated admissions scheme – to ensure that where a child could be offered a place at more than one school, the offer made is for the highest possible preference. I agree with the school that this is not relevant to this case and I have not therefore taken it into account in this determination.

Conclusion

28. For the reasons given above, I find that the admission arrangements for the school do not conform to paragraph 1.9 f of the Code by giving priority to children of UK service personnel, retiring service personnel and crown servants and to paragraphs 15 d, 1.6 and 2.8 of the Code in relation to the requirement to admit up to PAN where there is demand for places in the normal year of admission.

Determination

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the governing body for Bishop Henderson Church of England Voluntary Aided Primary School, Somerset, for 2014.

30. 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: 22 August 2013

Signed:

Schools Adjudicator: Ms Shan Scott