

DETERMINATION

Case reference: ADA002458

Referrers: Two parents

Admission Authority: The governing body of the Minster School,
Southwell, Nottinghamshire

Date of decision: 9 July 2013

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the governing body of the Minster School, Nottinghamshire, for admissions in September 2013 and September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K (2) of the Act 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. The admission arrangements (the arrangements) of The Minister School (the school), a voluntary aided school in Southwell, Nottinghamshire with a Church of England religious character for pupils from 8 – 18 years of age, for September 2013, have been brought to the attention of the Schools Adjudicator by two parents in an email referral dated 18 June 2013. The referral questions whether the arrangements for admission to the junior department of the school comply with legislation relating to selection by ability or aptitude. Having looked at the arrangements for 2013, I considered that there may be matters that do not comply with legislation or the School Admissions Code (the Code) and I therefore also looked at the arrangements for admission in September 2014.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body, which is the admission authority for the school. The arrangements were referred to the adjudicator on 18 June 2013. I am satisfied that the referral has been properly made to me in accordance with section 88I of the Act and it is within my jurisdiction to consider them. I am also using my powers under Section 88I to consider the arrangements as a whole and the arrangements for 2014.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code. The documents I have considered in reaching my decision include:
- a. the referrers' email dated 18 June 2013;
 - b. the school's comments on that email, set out in emails of 24 and 26 June 2013;
 - c. extracts from former Articles of Government for the school dating from 1956, a Variation of the Articles from 1976 and the Southwell Minster Grammar School (Modification) Order from 1976;
 - d. comments from Nottinghamshire County Council, the local authority (the LA) on the school's draft admission arrangements and draft supplementary information form (SIF) for 2014;
 - e. the comments of the Diocese of Southwell and Nottingham (the diocese) which is the body representing the Church of England;
 - f. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. copies of the minutes of the meetings of the governing body at which the arrangements for 2013 and 2014 were determined;
 - i. copies of the determined arrangements for 2013 and 2014, and
 - j. a copy of the document setting out minimum academic criteria for admission to Year 12 (Y12).

4. I have also taken account of information received during a meeting I convened on Wednesday 3 July 2013 at the school.

The Referral

5. The referral concerns whether or not the arrangements for admission to the junior department of the school comply with the requirements of section 100 of the Act and paragraphs 1.17 to 1.24 of the Code in relation to the selection of pupils by aptitude or ability.

Other Matters

6. At the meeting I raised other matters that did not comply with the requirements of the Act or conform to the Code. Unless specified, in all cases the matters apply to the arrangements for both 2013 and 2014.

Year 3 (Y3) Admissions to the Junior Department

7. In relation to admission to the junior department, the matters are that:
- a. no published admission number (PAN) has been set as required by section 88D of the Act;
 - b. the school keeps places empty in the junior department when there are applicants for those places and, as it is not a designated grammar school, this does not comply with the requirement in paragraph 1.18 of the Code;
 - c. the arrangements used by the school to select by musical aptitude are not clear as required by paragraph 14 of the Code and that aspects of the tests used are tests of ability rather than aptitude and that this contravenes the basis of selection at this school permitted by section 100 of the Act;
 - d. as a mixed school the school is unlawfully reserving some places in the junior department for boys. The Equality Act 2010 provides that a school (other than a single sex school) must not discriminate on a number of grounds including gender in the arrangements and decisions it makes as to who is offered admission as a pupil. Further, a co-educational school can have only one PAN for each relevant year of entry and this cannot be divided into some places for boys and other places for boys and girls;
 - e. some places in the junior department have been offered on condition that pupils “remain in training for, or join the Minster choir” . This amounts to conditionality which is prohibited by paragraph 1.9a of the Code; and
 - f. the arrangements do not include information about parents’ right of appeal if their child is refused a place as required by paragraph 2.24 of the Code.

Year 7 (Y7) Admissions to the Main School

8. In relation to admission at Y7 to the main school, the matters are that:
- a. the SIF asks for information that is not necessary for the school to apply its oversubscription criteria and for information already provided by parents on the common application form (CAF) which is prohibited by paragraph 2.4 of the Code;
 - b. the oversubscription criteria appear to provide for the exercise of discretion by the governing body in deciding who should be offered a place which is prohibited by paragraphs 1.8 and 2.7 of the Code;
 - c. the worship criterion is not clear and could not be easily understood by parents as required by paragraphs 1.8 and 1.37 of the Code and that

the form used to seek support from clergy for those seeking places using the worship criterion asked for information not included in the oversubscription criteria which is against the requirements of paragraph 2.4 of the Code, and

- d. the admission arrangements for Y7 wrongly suggest that some pupils in Y6 at the school might not have the right to move into Y7.

Admission to Year 12 (Y12) Sixth Form

9. In relation to admission to the sixth form, the matters are that:
 - a. no PAN has been included in the admission arrangements as required by section 88D of the Act;
 - b. as with the arrangements for Y7, the worship criterion does not conform to the requirements of the Code;
 - c. the arrangements state that in order to be admitted applicants must meet minimum academic requirements. However, these requirements are not specified as required by paragraph 2.6 of the Code, and
 - d. as with the arrangements for Y7, the SIF asks for information which is not part of oversubscription criteria.

All relevant Age Groups

10. For all relevant year groups, the arrangements do not include a final tie breaker as required by paragraph 1.8 of the Code.

Background

11. The Minster School comprises a small junior department of 40 pupils from Y3 to Y6 together with a much larger secondary department with a PAN of 240 and a sixth form. Most pupils from Y11 join Y12 but the school also regularly admits around 30 pupils into Y12 from other schools. The school has for very many years combined the roles of educating the choristers of the nearby Southwell Minster and providing secondary education for its local community. All the pupils in the junior department are selected on the basis of musical aptitude. There is no selection by aptitude for admission to Y7. Those applying for places in Y12 must meet minimum academic criteria.

12. The school has traditionally selected pupils in the junior department on the basis of musical aptitude. I have seen extracts from the school's former Articles of Government which confirm that the school was operating in this way in 1956 and 1976. The school selected pupils in the junior department in this way at the beginning of the 1997-98 school year and is permitted by section 100 of the Act to continue to do so.

13. At my meeting with the representatives of the school, they stressed the importance to them of both supporting the Minster and its choir and of providing inclusive secondary education for the local community. It was clear at the meeting

that the school's admission arrangements had developed over many years. While those arrangements do not conform in significant ways with legislation and the Code, the school was very keen to work to ensure that its arrangements were made compliant. It is also worth noting that the school had met all the requirements of legislation and the Code in relation to the process of consulting on, determining and publishing its arrangements and the arrangements for all age groups were easy to find on its website. The school – and the representatives of the diocese and the local authority – made themselves available at short notice to meet me in order to help ensure a speedy resolution of the referral.

Consideration of Factors

Junior Department

14. The referrers questioned the basis of selection to the junior department. I am clear that (for the reasons given above) the school may give priority on the basis of musical aptitude to all pupils applying for places at the junior department. However, the admission arrangements and the description of the audition process on the school's website refer also to musical ability. In addition, the material I have seen which outlines the audition arrangements include elements which test existing ability (including the standard already reached in playing musical instruments) rather than aptitude. The school may not give priority on the basis of musical ability and the arrangements (including the audition arrangements) must be amended accordingly. The school undertook to make the necessary amendments.

15. The arrangements say that "No pupil will be admitted who has not passed the relevant test of musical aptitude" and that "In the event of fewer ... places being awarded, the balance of places will remain unfilled." Paragraph 1.6 of the Code provides that: "If the school is not oversubscribed, all applicants **must** be offered a place (with the exception of designated grammar schools...)". The school is not a designated grammar school and cannot keep places unfilled where there are applicants for those places and its arrangements must be altered accordingly. The school agreed to change its arrangements and practice so that places would not be kept empty.

16. The admission arrangements provide for two categories of places in the junior department: choral places and instrumental places (including voice). The arrangements explain under the heading for choral places that a maximum of eight places will be available in the junior department for boys who pass a vocal audition with the Rector Chori of Southwell Minster. At our meeting, the school explained that these auditions were separate from those held for children applying to the school on the basis of musical aptitude. The school is a mixed school. It cannot reserve places for or give any priority to boys over girls. To do so is against the provisions of the Equality Act 2010 which prohibits discrimination on the grounds of gender (other than in single sex schools) in the arrangements and decisions made by an admission authority in determining who should be offered a place at the school. In addition, the Order made when the school became co-educational in 1976 also provided that references to boys should be read as references as if they were references to boys and girls. The school must change its arrangements so that it no longer gives priority for any places to boys and the school agreed that it would do so.

17. In addition, because the school has operated two separate audition processes and at different times of the year, it is impossible to be clear about the standard achieved by different children relative to each other or, indeed, to any determined standard. The arrangements are not clear or fair as required by paragraphs 14 and 1.8 of the Code and must be amended. The school agreed to change its arrangements.

18. It is open to schools which are permitted to select on the basis of aptitude either to rank all those who apply on the basis of that aptitude or to set a pass mark and then, if necessary, to distinguish between all those who achieve that pass mark on the basis of other (permitted) oversubscription criteria. It was not clear to me from the school's arrangements which approach it was adopting. On the one hand, the arrangements referred to applicants being ranked by aptitude and, on the other, to passing the aptitude test and to the use of other oversubscription criteria (not related to musical aptitude) to distinguish between applicants. This again means that the arrangements are not clear. The arrangements must be amended. At the meeting, the school indicated that it would adopt an approach of ranking all applicants on the basis of test of aptitude and admitting those who achieved the highest scores. The school also undertook to adopt Code compliant criteria to be used where two (or more) candidates achieved the same score for the last place.

19. The admission arrangements do not include a PAN for the junior department. The school explained that their practice was to decide how many children to admit into Y3 on the basis of the aptitude of the applicants in any given year together with the numbers who had been admitted in previous years. They were also always keen to ensure that they had capacity to admit a pupil into any year group of the junior department who had exceptional aptitude, in particular in order to meet their historical commitment to the Minster and its choir.

20. While I understand the school's wish to support the Minister, this cannot and must not lead it to fail to comply with legislation and the Code. Section 88D of the Act and paragraph 1.2 of the Code requires admission authorities to determine a PAN for each relevant age group, which is each age group at which pupils are normally admitted to the school. The School agreed that it would determine a PAN for Y3.

21. The admission arrangements include a statement that choral places would be available only to boys who "... remain in training for, or join the Minster choir." I have dealt above with the wider issue of choral places and reserving places for boys. A commitment to behave in a certain way is a condition and is contrary to paragraph 1.9 a) of the Code. The school has agreed to remove this.

22. The school agreed that it would include information about the right of appeal should a child be refused a place as required by paragraph 2.24 of the Code.

Main School

23. The school is popular and regularly oversubscribed for places at Y7. It has a PAN of 240 and for admission in 2012, 364 preferences were expressed for a place.

24. The school's admission arrangements state that children with a statement of special educational needs (SEN) where the statement names the school will be

admitted. In the arrangements, both children with a statement and looked after and previously looked after children were included under a heading "Special Circumstances." The arrangements do not contain a heading for the section on oversubscription criteria.

25. The admission of children with a statement is not part of a school's oversubscription criteria as the admission to schools of these children is subject to a different statutory process. It would be helpful and clearer if the arrangements provided that children with a statement of SEN which named the school would be admitted and then had a heading signalling the oversubscription criteria. The school has agreed to make these changes and has agreed to include a clear heading for the section of the arrangements which set out the oversubscription criteria.

26. Once children with statements and looked after and previously looked after children have been admitted, the arrangements give priority for up to 70 foundation places. These currently include those children transferring from the junior department and pupils applying on the basis of worship at a Church of England church. In relation to the children already at the school, the admission arrangements for the junior department state that these children will automatically transfer to the main school at age 11. I understand that this provision was included on the advice of Nottinghamshire LA. Unfortunately, this provision is not reflected in the arrangements for admission to Y7 which instead provide that: "Students transferring from the Minster School Junior Department will automatically transfer into Y7, (excluding students who withdraw from the Choir, who will no longer be guaranteed a place in Y7, in such cases parents must apply through the normal process for entry into Y7)."

27. Minster School is a single school for pupils aged 8 – 18 years. Pupils who are registered at the junior department have the right to move from Y6 to Y7 unless they have been withdrawn by their parents or permanently excluded. The school agreed to change its arrangements. The school also said that it would consider consulting on a slightly lower PAN for Y7 as the PAN can relate only to those who are being admitted to the school for the first time. If Minster School sets its PAN at 240, this means that it must offer places to 240 children who are not already registered at the school if that number apply, plus those children transferring from Y6. The school indicated that it may consult for future years on a slightly lower PAN.

28. The school uses a SIF. This is permitted by paragraph 2.4 of the Code but that paragraph also provides that admission authorities **must** only use supplementary forms that request additional information when this has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. The school's SIF requests information that does not fall within the parameters above. The school has been discussing its SIF with the local authority and I have been shown a version with some suggested changes.

29. The SIF asks for details of the primary schools attended and of siblings already attending the Minster School. This information is already available from the common application form and is not, therefore, additional information. The school has agreed to remove these elements from the SIF.

30. The SIF includes a text box in which parents are asked to give "any additional information in support of your application." When I asked what information might be

expected to be included here, the school explained that this could be used by parents who were seeking a place on the basis of medical, mobility support or special educational needs or because of their social circumstances. This is not clear as the form is drafted. Moreover, it could be seen as an invitation to provide information which is not related to the oversubscription criteria and is accordingly not permitted by paragraph 2.4 of the Code. The school agreed that it would be clearer and more objective if the box were removed and that the SIF instead provided for the attachment of written evidence from a doctor, social worker or other relevant professional in line with the provision in the oversubscription arrangements.

31. In addition, the SIF states that all parents seeking a place at the school are required to complete the form. This is not true. It is true that a parent who does not complete a SIF may well reduce the chances of a child securing a place at a school if that school is oversubscribed as the school will not be able to apply certain of its oversubscription criteria. However, admission authorities must still consider all applications whether or not accompanied by a SIF. Paragraph 15 d) of the Code is clear that where a school is undersubscribed, any parent that applies **must** be offered a place. The school agreed that it would change the SIF to be clear that parents were encouraged to complete it but not compelled to do so.

32. The school gives priority under the foundation places category to pupils who themselves or whose parents worship at Church of England churches. In 2012, children were admitted on this basis and for 2013, 53 children are expected to join on this basis. Schools with a religious character are allowed by paragraph 1.37 of the Code to use faith-based oversubscription criteria for some or all of their places. As with any other oversubscription criteria, these must meet the requirements of paragraphs 14 and 1.8 of the Code and be clear, fair and objective. Paragraph 1.37 of the Code requires that admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. The relevant oversubscription criteria for the Minster School give priority within the foundation places category first where “either parent and/or child currently worships at least monthly at a Church of England Church as a communicant and for how long” and then where “either parent and/or child currently worships at least monthly at a Church of England Church and for how long, but who are not communicants”.

33. Similarly, in the parental preference category, priority is given to pupils who themselves or whose parent worships at least monthly at a Christian Church and for how long and then to those who themselves or whose parent worships at least monthly within another faith community and for how long.

34. In so far as they relate to the length of time people are required to have worshipped for, these arrangements are not clear or objective. Parents looking at these arrangements could have no idea whether their own practice in terms of its longevity would meet the requirements.

35. The SIF state that for applications for foundation or parental preference places, “supportive information” is required from a Minister of Religion and asks for the name and address of a clergy referee. I asked the school for a copy of the letter sent to clergy and this was given to me at the meeting. The form itself had the same wording which I have described above in relation to how long pupils and/or parents have been

attending a church or other place of worship. It also asked for information which is not part of the oversubscription criteria, specifically, how long the Minister of Religion has known the family and in what capacity as well as for “any general information directly related to the criteria under which the parents have applied”, and whether the parent and/or child attend church rarely/occasionally/monthly or weekly. This letter is part of the admission arrangements for the school. It does not meet the requirements of paragraphs 14 and 1.8 in relation to clarity. In addition, it asks for information which is not related to the oversubscription criteria, such as asking whether the parent and/or child attend church weekly when the requirement in the oversubscription criteria is for monthly attendance.

36. The school has agreed to change its faith-based criterion so that it is objective, clear and easy for parents to understand. The school has also agreed to revise the letter to clergy so that it is itself in conformity with the Code and so that it reflects the revised admission arrangements in so far as these are faith-based.

37. The arrangements refer in relation to foundation places to the “Governors having regard to the following factors” and in relation to parental preference places say “Governors will consider applications” and again “will have regard to the following factors”. These forms of words could suggest that the governors as the admission authority might consider themselves not to be bound to consider applications solely by applying the published oversubscription criteria and that they have some discretion in the application of the arrangements. Paragraph 15d of the Code requires that all applications are considered solely against the admission arrangements and paragraph 2.7 requires that admission authorities **must** allocate places on the basis of their determined arrangements only. The school said that the admission authority was careful always to consider applications properly and agreed to change the wording of the arrangements to make this clear.

38. When I read the LA’s composite prospectus for 2013, I noted that a number of primary schools were listed under the section on the Minster School as linked primary schools. There is no reference in the school’s admission arrangements to feeder schools. When I asked about this at the meeting, the LA representative explained that this referred to historical links and confirmed that they were of no significance in relation to admissions. I think that their inclusion in the composite prospectus could be confusing or misleading to parents – at worst suggesting to parents a priority which does not exist for admission to the Minster School through attendance at a particular primary school. The LA agreed to remove this section from the prospectus for future years.

Sixth Form

39. The school admits pupils into Y12 and I have accordingly also considered the admission arrangements for that year. The school explained at our meeting that most of its Y11 pupils joined Y12 and that in addition around 30 students each year joined from other schools.

40. The determined arrangements do not include a PAN for Y12. As explained above in relation to Y3, the school must determine and publish a number for each relevant age group. The school agreed that it would do this. Admission arrangements apply only in respect of pupils who are joining the school and not those who are

transferring from Y11. This must be made clear in the admission arrangements and on the SIF and the school undertook to change its arrangements accordingly.

41. It is permitted by paragraph 2.6 of the Code for admission authorities to set academic entry criteria for their sixth form. Where they do so, these **must** be the same for both external and internal places. The school's arrangements for Y12 stated that to be admitted applicants must meet the school's minimum entry requirements. Where such entry requirements (which can only be academic requirements) are used, they form part of the admission arrangements and must be included in those arrangements. The school agreed that it would include the specific academic requirements in the admission arrangements.

42. The school's SIF for Y12 does not reflect the provision of paragraph 2.6 of the Code that young people themselves may apply for places in Y12. The school agreed to alter its SIF to make it clear that it could be completed by a parent/carer or a young person.

43. The SIF asks for information that is not needed for application of the oversubscription criteria and is not accordingly permitted by paragraph 2.4 of the Code. This information is the request in the case of applicants who currently attend independent schools for details of any state school previously attended and the invitation to give any additional information in support of the application. The school agreed to remove both of these.

44. The faith-based oversubscription criteria for Y12 includes the unclear provision about the amount of time an applicant has been attending a place of worship which is discussed above in relation to the Y7 arrangements. The school agreed to amend this in the same way as for Y7. The admission arrangements for Y12 are not accurately reflected on the SIF. The oversubscription faith-based criterion used the formulation "worships regularly and frequently" whereas the SIF refers to worshipping "at least monthly". More broadly, for Y12 places the oversubscription criteria do not include any priority for catchment area applicants, yet the SIF includes references to catchment area. The school agreed to bring the SIF into line with the oversubscription criteria.

45. The representatives of the diocese and the LA both spoke of the good relationships they enjoyed with the school and were supportive of the changes the school had undertaken to make to its arrangements to ensure that they conformed to the requirements of the Code.

All relevant Age Groups

46. The oversubscription criteria for all the relevant age groups include as a tie break "the straight line distance from the front gate of the student's registered home address to the school reception." In the - albeit rare - event that two applicants for the final available place lived the same distance from the school there would be no way to separate them as required by paragraph 1.8 of the Code. The school agreed that it would include a final tie break.

Conclusion

47. With regard to the referral I have concluded that the arrangements of the school for admission to the junior department on the basis of musical aptitude do not conform with requirements of admissions legislation and the Code.

48. In addition I have considered the 2014 arrangements with the school. In the ways described and for the reasons given above, I have concluded that several aspects of the arrangements for each of the relevant age groups do not conform with requirements.

49. Once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of the Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.

50. In this case, the school has readily accepted that some aspects of its arrangements did not meet the requirements of the Code and it has immediately agreed to amendments for inclusion in the revised arrangements in order give effect to mandatory requirements.

Determination

51. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the governing body of the Minster School, Nottinghamshire, for admissions in September 2013 and September 2014. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

52. By virtue of section 88K (2) of the Act 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: 9 July 2013

Signed:

Schools Adjudicator: Ms Shan Scott