

DETERMINATION

Case reference: ADA/002354-2361

Objector: Luton Borough Council and Luton Admission Forum

Admission Authority: Board of Trustees of Barnfield Academy Trust on behalf of Barnfield Academy (South), Barnfield Academy (West), Barnfield Enterprise Studio School and Barnfield Moorlands Free School.

Date of decision: 29 August 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by the Board of Trustees of the Barnfield Academy Trust.

I have also considered the arrangements in accordance with section 88I (5). I determine that there are elements within the admission arrangements for each of the schools that do not conform with the requirements relating to admission arrangements.

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 Luton Borough Council (the council) and by Luton Admissions Forum (the objectors), about the admission arrangements (the arrangements) for the Barnfield Federation of schools (the Federation) comprising Barnfield Academy (South), Barnfield Academy (West), Barnfield Studio School and Barnfield Moorlands Free School. All these schools are Academy Schools with one designated as a Studio Academy and one designated as a Free school. The objection concerns the failure of the Federation to inform appropriate bodies about the determined admission arrangements and post the arrangements on the individual school websites by 1 May 2012. The objection also concerns the introduction of a new oversubscription criterion that gives priority to children of staff before catchment area children.

Jurisdiction

2. The terms of the Academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the Academy Schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the Barnfield Academy Trust, which is the admission authority for these four Academy schools, on that basis.

3. The objectors submitted their objections to these determined arrangements on 27 June 2012 and 28 June 2012. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:

- a. the objectors' letters of objection dated 27 June 2012 and 28 June 2012;
- b. the Federation's response to the objections and supporting documents sent on behalf of all the schools named in the objections;
- c. the council's composite prospectus for parents seeking admission to schools in the area in September 2012;
- d. a map of the area identifying relevant schools;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the Board meeting on 27 June 2012 at which the Board of Directors of the Federation ratified the arrangements after they had been determined using the Chairman's approval powers; and
- g. a copy of the determined arrangements for each of the four schools in the Federation.

The Objection

5. The objections from the two objectors are the same and apply to all the Federation schools named above. I therefore consider that I should respond to all the points within this single determination. The first part of the objection is that the Federation failed to comply with paragraph 1.47 of the Code in two respects. Firstly, the Federation did not send copies of its determined arrangements to all those who responded to the consultation until 18 June 2012 which gave respondents insufficient time to lodge an objection to the arrangements by the deadline for objections which is 30 June 2012.

Secondly, the Federation failed to post the copy of the arrangements for each of the schools on their websites or on the Federation website by 1 May 2012.

The second part of the objection concerns a new oversubscription criterion that the Federation has introduced for its schools which gives the children of staff priority before catchment area children. Paragraph 1.39 of the Code gives schools permission to introduce this as a criterion. The objectors do not consider that this is fair or reasonable in their local situation.

Other matters

6. I have reviewed the admission arrangements for these four Academy Schools and there are matters that need to be addressed as follows.

7. The Barnfield Moorlands Free School admission arrangements for 2013-2014 shown on the school website state that 30 per cent of the remaining places after the application of the first three oversubscription criteria will be allocated for pupils admitted from the priority area. Unless the base number for calculating the 30 per cent is a multiple of three, the arrangements need to explain whether fractions of a pupil are rounded up or rounded down so that parents can be clear.

8. Barnfield Enterprise Studio School has its admission policy for 2013-2014 on its website. Paragraph 5 states that Year 10 applicants should apply using the council's common application form and the admissions will be administered by the council. Paragraph 7 states that all admissions will be classed as in year admissions and will be managed by the Studio School, by implication this means that it is possible to apply for a place at any time of the year. Paragraphs 8 and 9 in the arrangements published make reference to late applications. Paragraphs 5, 8 and 9 are in contradiction to the paragraph 7 that states that all applications will be classed as in year. The Board should resolve this contradiction within the policy and be clear how applications will be dealt with.

9. Paragraphs 6 and 16b within the arrangements for Barnfield Studio School refer to feeder primary schools. Elsewhere the policy states that admissions are for pupils Year 10 and above. The policy needs to be amended to clarify the reference to the named feeder schools.

10. Paragraph 4 in the arrangements for each of the four schools states "It is intended that the Admission arrangements for 2013-2014 will be formally adopted by the Board of Directors of the Academy. " This is a confusing statement. The Board must determine and publish its arrangements by 15 April. This year the arrangements were determined by the Chairman of the Board using Chairman's approval and the arrangements were formally ratified by the Board on 27 June 2012. For future years, the Board should ensure that it has scheduled a meeting that will allow it to determine its annual admission arrangements before 15 April. Variations to the determined arrangements may only be made as set out in paragraphs 3.6 and 3.7 of the Code.

Background

11. Barnfield Academy Trust was established in 2007 under the sponsorship of Barnfield College. The Trust, which is known locally as the Barnfield Federation, comprises Barnfield College which is a Further Education College, Barnfield Academy (West), a school for pupils aged 11-18 years which became an Academy School in 2007; Barnfield Academy (South), for pupils aged 11-18 years which also became an Academy School in 2007; Barnfield Studio School which opened in September 2011 as an Academy School for Year 10 and Year 11 students with a sixth form; and Barnfield Moorlands Free School for pupils aged 5-11 years which became an Academy School in September 2011 and joined the Federation in January 2012.

12. The Federation consulted on the admission arrangements for the four schools between 28 December 2011 and 29 February 2012. The consultation proposed the introduction of some significant changes, such as the introduction of banding for September 2013. The proposals were discussed by the Luton Admission Forum at its meeting in January 2012. There were 116 responses to the consultation. These comments were collated into an internal discussion paper dated 21 March 2012 for consideration by members of the Federation Trust Board. The paper recommended that the Board did not introduce banding at this time. It is not clear how the Board discussed the paper. The admission arrangements for 2013/2014 were determined and approved by the Board Chair prior to submission to Luton and Bedfordshire Authorities in on 4 April. The Chairman's actions were subsequently approved by the Board at the meeting on 27 June 2012.

13. Following a further round of discussions with the council in May 2012 the Barnfield Academy Trust admissions team agreed some further post determination changes. These were sent to the Secretary of State for approval in May. The Board of the Barnfield Academy Trust met on 27 June 2012. It resolved to approve the actions taken under Chair's approval and agreed to determine the final arrangements at the Board's September meeting in the understanding that the minor changes agreed with the council would have been approved by the Secretary of State by then.

14. One of the changes made to the arrangements for the schools within the Federation as part of the arrangements approved by the Chair in April 2012 is the subject of the second part of the objection to the arrangements. The Code at paragraph 1.39 states that schools may give priority to the children of staff at the school. In its criteria for the four schools, the Trust has decided to offer this as way of recruiting and retaining staff. The wording used is compliant with the Code. The objection is that the application of this criterion is neither fair nor reasonable. The objectors point out that paragraph 14 of the introduction to the Code requires arrangements to be fair and paragraph 1.8 requires arrangements to be reasonable.

Consideration of Factors

15. The first part of the objection concerns the procedure followed for publishing the determined admission arrangements for the four schools within

the Barnfield Federation.

16. The Code states in paragraph 1.46 that an admission authority must determine its arrangements by 15 April and must send a copy of their full determined arrangements to the local authority as soon as possible before 1 May. The evidence provided by the Federation is that the determined arrangements were sent to the local authorities on 3 and 4 April. This timescale meets the requirements of the Code.

17. Paragraph 1.47 of the Code states that “once admission authorities have determined their admission arrangements they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole of the offer year.” There is no specific timescale attached to this requirement but the implication in the wording, “Once admission authorities have determined..” is that this happens immediately after the determination of arrangements.

18. The Federation published the 2013-2014 admission arrangements on the schools’ websites and wrote to appropriate bodies on 18 June 2012. The sequence of events does not in my view meet the requirements of paragraph 1.47 of the Code. Although both of the objectors had time to object before 30 June, others may not have had time to make their views known. The arrangements should have been published immediately after they had been approved by the Board and the Board should have met prior to 15 April to determine the arrangements.

19. The Barnfield Academy Trust Board is intending to meet to give full and final approval to the determined arrangements in September 2012. The published policy in June 2012 for each school states that it is subject to minor variations to be approved by the Secretary of State for Education. The Code states that the determination of the arrangements by the admission authority has to take place before the 15 April. If subsequent variations to these arrangements are sought by an academy, these have to be determined by the Secretary of State and if agreed, these then become the arrangements without further decision. If they are not agreed then the Academy Trust Board will not be able to make these variations for the 2013-2014 admission year. If the Academy Trust Board wishes to introduce new proposals for 2014, it will need to consult on them with reference to the Code at paragraphs 1.42 to 1.45. The Academy Trust should consider scheduling a Board meeting before 15 April 2013 to meet the deadline for determining admission arrangements for the 2014-2015 admission year.

20. The second part of the objection concerns the introduction of the new oversubscription criterion prioritising children of staff before catchment area children. This is considered to be unfair (paragraph 14 of the Code) and unreasonable (paragraph 1.8 of the Code) by the council and by the forum.

21. The council would like to see catchment area children prioritised ahead of staff for the following reasons:

- a. The council has operated an admissions system based on catchment areas for many years to try to ensure that school

places are available for local children. In the main every Luton child lives in the catchment of one high school and historically every high school has given top priority to catchment area children after children in care and those with a statement of special educational needs.

- b. In recent years some children living in the catchment areas of some high schools have been refused a place when they have applied on time and specified their catchment area school as a preference because the schools were at capacity. The council argues that by prioritising children of staff this issue would be exacerbated.

22. The council's admissions booklets for schools in the area show that in 2011 admissions to the four schools in the Federation were as follows:

	Planned Admission Number for 2011	Planned Admission Number for 2013	Number of admissions in 2011	Number of pupils admitted living in the catchment area of the school
Barnfield Academy (West)	240	270	229	135
Barnfield Academy (South)	240	270	188	161
Moorfields Free School	54	54	54	32
Barnfield Enterprise Studio Academy	60	75	4	4

23. The Code at paragraph 1.39 enables admission authorities to give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:

- a. where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made; and/ or
- b. the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.

24. I have checked that the schools have taken account of these circumstances and that they are made explicit in their oversubscription criteria.

25. The council argues that the admission arrangements must be fair (the introduction to the Code paragraph 14) and reasonable (paragraph 1.8).

Paragraph 14 states that “..admission authorities must ensure that that the practices and criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for a school will be allocated”. I can find no fault with the clarity and objectivity of the criterion and I doubt that any parent will not understand the arrangements. The objection also concerns the fairness of the criterion. The Code at paragraph 1.9f and 1.39 permits schools to prioritise the children of staff, the objectors contend that it is not fair or reasonable to do so. They refer to the legitimate concerns of the catchment area parents who may not obtain a place if this criterion is used. In response, the Federation argues that the numbers of children involved here are small and in the case of the three secondary schools they have the available capacity. The Code allows this criterion to be used, the numbers involved are small and there are potential benefits for a school in recruiting and retaining staff that will balance the small number of places that may be unavailable to catchment area children.

26. Looking at the figures for 2011 provided in the council’s admissions booklets, it could be seen that of the 12 high schools, six admitted to their limit and the remaining six had between them 257 spare places. The council will need to consider the mismatch between places available and numbers within the respective catchment areas as numbers grow and make some plans to manage the growing numbers of catchment area children over the next few years. It will need to do this regardless of this change to the admission arrangements at these schools. I am not persuaded that the use of this permitted criterion in this case is either unfair or unreasonable.

Conclusion

27. The Code states in paragraph 1.46 that an admission authority must determine its arrangements by 15 April and must send a copy of their full determined arrangements to the local authority as soon as possible before 1 May. The evidence provided by the Federation is that the determined arrangements were sent to the local authorities on 3 and 4 April. This timescale meets the requirements of the Code.

28. Paragraph 1.47 of the Code states that “once admission authorities have determined their admission arrangements they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole of the offer year.” There is no specific timescale attached to this requirement but the implication is that this happens immediately after the determination of arrangements. The Federation published the 2013-2014 admission arrangements on the school websites and wrote to appropriate bodies on 18 June 2012. The objectors argue that this was too late for any other parties to be able to object. I consider that the sequence of events contravened the Code and for these reasons I uphold this part of the objections made.

29. The Code states in paragraph 1.39 that admission authorities may give priority to staff in their admissions criteria. The objectors argue that by doing this it will exacerbate the situation where catchment area pupils cannot gain access to their catchment area school. The three secondary phase schools in

the Federation did not admit to their PAN in 2011 although the primary school did admit to its PAN of 54 pupils. If this criterion was not implemented, there are still likely to be catchment area children who cannot gain access to their catchment area schools because of the increasing numbers of pupils in the area, however, the three secondary schools that are the subject of this objection were not at capacity in 2011. On these grounds I am not persuaded that introducing this criterion can be described as unfair or unreasonable. As a result I do not uphold the objections made.

There are changes that need to be made to the published admission arrangements in order for the arrangements to be compliant with the Code. The areas where changes are required are described in the paragraphs above under "other matters".

Determination

30. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements determined by the Board of Trustees of the Barnfield Academy Trust.

31. I have also considered the arrangements in accordance with section 88I (5). I determine that there are elements within the admission arrangements for each of the schools that do not conform with the requirements relating to admission arrangements.

32. 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: 29 August 2012

Signed:

Schools Adjudicator: David Lennard Jones