DETERMINATION

Case reference: **ADA 2327**

Objector: **Bradford Metropolitan District Council**

Admission Authority: **The Governing Body of Laisterdyke Business and Enterprise College, Bradford**

Date of decision: **24 August 2012**

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 of Laisterdyke Business and Enterprise College for admissions in September 2013.

I have considered these arrangements in accordance with section 88I (5). I determine that they do not conform with the requirements relating to admission arrangements, as set out in paragraphs 23 to 31 of this determination.

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 Bradford Metropolitan District Council (the council) about the admission arrangements (the arrangements) for Laisterdyke Business and Enterprise College (the school), a Foundation secondary school, for September 2013.

2. The objection is to the adequacy of the consultation carried out prior to the determination of the arrangement, which were substantially revised from those which had applied for admissions in September 2012.

Jurisdiction

3. 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 their objection to these determined arrangements on 28

June 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

a. the council's form of objection dated 28 June 2012;

b. the school's response to the objection and supporting documents;

c. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;

d. a map of the area identifying relevant schools;

e. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and

g. a copy of the determined arrangements.

I have also taken account of the contents of a meeting with the parties which I convened at the offices of the council on 21 August 2012.

The Objection

6. The council has objected to a failure of the school to consult with it and with other parties concerning changes which the school wished to make in its admission arrangements for September 2013.

7. In making its objection, the council stated that it was content with the wording of the determined arrangements, but that it had contacted the school asking it to revert to its previous arrangements (those which applied for September 2012).

Other Matters

8. The school has told me that it was happy to revert to its previous arrangements when asked to do so, given that it had acknowledged that its consultation had not met the requirements of the Code. The governors met on 9 July 2012 and agreed to do this, and the school has forwarded what it refers to as the revised arrangements for September 2013, which are the same as those which were employed for admissions in September 2012.

Background and Consideration of Factors

9. The school's admission arrangements for September 2012 used banding and random allocation to determine priority for admissions if the school was oversubscribed.

10. For September 2013, the school has determined different arrangements in which banding is no longer used, but which instead give priority firstly to siblings and then use distance from the home to the school to determine the priority given to the remaining applicants.

11. On 11 July 2012 the school responded to being told that the council had made an objection to these new arrangements. It informed me that:

"The College is withdrawing its proposed admission arrangements for the College for September 2013 - July 2014, and will continue to use the same admission policy as used this current academic (sic) with no changes."

12. A document entitled "Admission arrangements for September 2013" was attached. Other than in its title, this conformed to the admission arrangements for the school for September 2012.

13. However, the minutes of the Governing Body on 26 March 2012 which the school has provided show quite clearly that the governors had agreed a revised admission policy on that date. I must therefore conclude that the school's determined arrangements are those agreed on 26 March 2012. It was reported to the governors on that occasion that

"a response has been received from a local school and anecdotal feedback received from parents. The general view is that it is a 'common sense' policy".

The minutes go on to say that "Members (of the Governing Body) expressed surprise that there was no written feedback but took the view that it was a reasonable assumption to make that it showed there were no areas of concern."

14. The school responded on 17 July 2012 to the substance of the objection, and acknowledged that its consultation period had been too short, but stated that "letters had been sent out" (on 13 January 2013), which had enabled the consultation to be reported to the governors as described above. Paragraph 1.43 of the Code says:

*"Consultation **must** last for a minimum of 8 weeks and **must** take place between 1 November and 1 March in the determination year."*

The last date on which consultation could have been started if this requirement was to be observed was therefore 4 January.

The school did not say to whom it sent the letters, but the council state in their objection that "the governors did not consult with the LA" and also say that they were unaware of any of the required parties listed in the Code (paragraph 1.44) having been consulted. I cannot be certain whether the council or others listed in paragraph 1.44 of the Code were consulted. I was shown

evidence at the meeting involving the parties which I held that indicated that the school had a record of having sent letters to local schools, but there was no evidence to substantiate this for the other required consultees. On the basis of the information available to me I agree that the school did not meet the requirements of paragraph 1.43 and 1.44 of the Code concerning consultation, certainly in respect of the duration of the consultation, and possibly also in respect of those consulted.

15. The school goes on to say in its letter of 17 July 2012 that the council wrote to the school on 30 May 2012 asking it to withdraw the (new) policy. The council also stated in its objection that this had been the case, and went on to refer to a meeting between the parties on 20 June 2012 at which the same request was made.

16. The school is not able to withdraw determined arrangements, as the council should be aware. This is made quite clear in the Code (paragraph 3.6) which has this to say:

"Once admission arrangement 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 this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals must be referred to the Schools Adjudicator for approval, and the appropriate bodies notified."

17. Consultation is a mandatory requirement of the Code, but a withdrawal of inadequately consulted upon but legally determined arrangements cannot be justified by this paragraph. In any case the Code refers to "revision" and to "other variations", not to wholesale deletion.

18. Inadequate consultation is, however, grounds for an objection to be brought once arrangements have been determined, and that it what the council has done. The council did not hear further from the school after the meeting on 20 June 2012 and, just before the 30 June deadline for doing so, referred its objection to the Schools Adjudicator.

19. The governors met again on 9 July 2012 and accepted that the consultation which it carried out was inadequate and agreed that the college revert to the "original" policy – that used for September 2012, but that a consultation exercise on a revised policy to apply from September 2014 should be undertaken (in the autumn).

20. I have given careful consideration to how I should proceed at this point.

21. My jurisdiction is to consider the objection and come to a view about it, and also to consider the determined arrangements in terms of their compliance with the Code, and so that is what I have done. I have, for example, no power to substitute the previous arrangements and therefore to give effect to what both the council and the school have believed to be the current position – that the admission arrangements for September 2013 will

be the same as those that applied this year. As I explained to both parties at our meeting, the school determined its arrangements for 2013 at its meeting on 26 March 2012.

22. I have therefore looked carefully at the arrangements which the school determined for admissions in 2013 on that date, in order to consider whether they meet with the requirements of the Code.

Paragraph 1.8 of the Code, states that

*"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all the relevant legislation….."*

23. The arrangements provide that after looked after and previously looked after children, second priority will be given to

"All children with statements of special educational need, naming (the school) will be allocated a place at the college. This is a statutory entitlement ….and is not part of the oversubscription criteria."

Since it is not part of the oversubscription criteria, this statement should not be listed amongst them and in my view doing so is confusing and makes the arrangements unclear. The statement is however useful addition to the admission arrangements as a whole.

24. Secondly, next priority is given to children who have exceptional social or medical needs. The Code has this to say (paragraph 1.16):

*"If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided."*

25. The school's oversubscription criterion reads as follows:

"Medical conditions/reasons must be supported by independent professional recommendations from the child's paediatrician or consultant. Social reasons are where they are deemed essential by an independent professional recommendation from the Director of Social Services, Probation, Children and Family Court Advisory Service [CAFCASS] etc. and Local Authority on behalf of the Council considers that a place should be offered on these grounds."

26. Although I have read this statement several times, I have not been able to follow its meaning. Firstly, there is no statement of what independent professionals are being asked to support. Where admission authorities wish, as here, to give children with exceptional social and medical needs very high priority, it is common for them to ask for evidence that it is considered essential that the child is admitted to the school in question, as opposed to another school, because of their social or medical needs. If the governors mean that to be the case, the arrangements should make this clear. If they intend the evidence which they ask for to be against some lower standard, for example that a place at the school would be desirable or highly desirable, the

arrangements should make this clear.

27. The term “etc” as employed in the statement is unspecific and therefore unclear. Parents should be able to see from the arrangements how oversubscription criteria will work, and “etc” here means that there is no clear knowledge of who could provide evidence of the need for a place at the school. The school has already specified more possible sources of evidence than is common for schools employing this oversubscription criterion.

28. Also, I do not understand the final phrase. The local authority is the council, so cannot speak on its behalf. I do not know why the governors would require the council also to agree the need for a place before one is offered, but if that is their intention then the wording should make that clear.

29. Thirdly, the next oversubscription criterion gives priority to siblings and a footnote explains:

“Please note – siblings means brothers and sister who live at the same address. Foster children and step sisters and step brothers are also included.”

It is unclear whether step siblings would need to live at the same address, or not, and the wording should be changed so that this is not to be in doubt.

The criterion itself says that priority will be given to children who have an older sibling attending the school at the time of admission. Since the school confirmed to me at the meeting which I held that the Governors wished to recognise all sibling links (this being the driving force behind their desire to change the arrangements), the restriction that a sibling at the school has to be older means that this is not clear. The wording should be changed to remove this unintended lack of clarity.

30. Fourthly, the fifth and final oversubscription criterion is worded in the following way:

“Children who live near to the proximity of the school….”

Taken literally, this means ‘children who live near to the area near to the school’, and it is clear from the rest of the wording that it is intended that priority should be given on the basis of the distance from the home to the school itself. The wording of the first phrase could therefore be confusing and should be changed. I was also informed at the meeting with the parties that the system used by the school to measure distance to parental homes is the council’s system, which employs ordinance survey address points, not the location of the entrance to properties as stated in the school’s arrangements. This wording would therefore prove confusing in practice to local parents and the school should change it so that a correct description of the process of distance measurement is provided.

31. Finally, the arrangements explain how a waiting list will be compiled and kept, and state:

“It will not be kept in application date order, but will be in line with the

published oversubscription criteria."

The Code, paragraph 2.14 says:

*"Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each child added will require the list to be ranked again in line with the published oversubscription criteria."*

The school's arrangement do not conform to this requirement of the Code, because they fail to state that the position of a given child on the waiting list may alter as new children are added to it. I also believe that the Code intends that waiting lists are kept in the precise order dictated by the oversubscription criteria, not "in line with them". Although paragraph 2.14 uses these same words, it is clear from the description in the Code of oversubscription criteria as "the criteria against which places will allocated at the school when there are more applications than places", and since the Code also requires that the arrangements must state "the order in which the criteria will be applied" (paragraph 1.6), that there is unequivocally only one permitted means for dealing with oversubscription, and that is the application of the determined oversubscription criteria applied in the order intended. This is not the meaning carried by the phrase "in line with", and the schools arrangements would be made more clear if they reflected the position established by the Code as a whole regarding the ordering of waiting lists.

Conclusion

32. It is clear that the school did not meet the requirements of the Code concerning consultation. Its own view of this is that it failed to consult for the stipulated period, but it does not agree with the statement made by the council that there had been no consultation (with the council, at least). Other than as described in paragraph 14, I have not looked further into this since the school has accepted in any case that it did not meet the Code's requirements. I therefore uphold the objection.

33. I have also set out above (paragraph 21) the reasons why I have taken the view that, even though the consultation prior to their determination was deficient, the arrangements which the governors agreed on 26 March 2012 must be those which form the basis as those that shall apply for September 2013.

34. These arrangements must be amended if they are to be compliant with the requirements of the Code, and I have indicated the changes which the governors should now make, if that is to be the case, in paragraphs 23 to 31.

Determination

35. 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 of Laisterdyke Business and Enterprise College for admissions in September 2013.

36. I have considered these arrangements in accordance with section 88I (5). I determine that they do not conform with the requirements relating to admission arrangements, as set out in paragraphs 23 to 31 of this determination.

37. 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: 24 August 2012

Signed:

Schools Adjudicator: Dr Bryan Slater