

DETERMINATION

Case references: ADA/2334, 2335 & 2364

**Objectors Bournemouth School for Girls
Bournemouth Admissions Forum**

Admission Authority: Bournemouth School

Date of decision: 20 September 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Bournemouth School for admissions in 2013.

I have also considered the arrangements for admission to the sixth form of Bournemouth School in accordance with section 88I (5) of the same Act, and have determined that they do not comply with the requirements relating to admission arrangements as set out in paragraphs 29 - 32 of this determination.

By virtue of section 88K (2) an 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 Schools Standards and Framework Act 1998, (the Act), objections have been referred to the Adjudicator by the governing body of Bournemouth School for Girls (BSG) and by the Bournemouth Admissions Forum (the Forum) about the admission arrangements (the arrangements) for Bournemouth School (BS), a selective Academy school for boys aged 11-18, for September 2013. The key focus of the objection is the provision in BS's arrangements for 2013 which makes it possible for it to admit a limited number of girls to its sixth form.
2. A second objection submitted by BSG relates to admission arrangements for September 2012.

Jurisdiction

3. The terms of the Academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for BS are in accordance with admissions law as it applies to maintained schools. The arrangements for 2013 now objected to were

determined by the governing body, the admission authority for BS, on that basis. The objectors submitted their objections to these determined arrangements on 26 and 29 June 2012. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

4. The objection relating to admissions for 2012 was submitted almost a year after the last date for such objections. I do not consider it would be reasonable to use the discretion afforded by regulation 23 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 to investigate the admission arrangements for September 2012.

Procedure

5. In the interests of economy and clarity I deal with the associated valid objections together in this decision.

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

7. I have carefully considered the extensive documentation submitted to me after the objections were made. A significant proportion of this material relates to the background to this case and to admissions in 2012 in particular. This includes correspondence between BS, BSG and various agencies of the Government. I have read this material carefully to identify any matters which have a direct bearing on the objections made for 2013, but have not sought to summarise it, or to refer to it, except where this is directly relevant to this decision.

8. The principal documents I have considered in reaching my decision are:

- a. the objectors' letters and forms of objection;
- b. the response to the objection submitted by BS and the supporting documents;
- c. the response of Bournemouth Borough Council;
- d. documents associated with the consultation conducted by BS on this proposal;
- e. copies of correspondence between BS and the then Young People's Learning Agency (YPLA) and the Education Funding Agency (EFA);
- f. copies of the minutes of the meeting of the governing body at which it determined the arrangements; and
- g. a copy of the determined arrangements.

The Objections

Bournemouth School for Girls

9. BSG's objection makes the following principal points.

Need for Places and Efficient Use of Resources

- a. Student number projections for the area indicate a fall in numbers of both boys and girls over the next six years. The decline is steeper among girls. There is no justification for the creation of additional places for girls.
- b. The admission of a significant number of girls to BS has been introduced in order to strengthen that school's viability. It does not take account of the fact that it will have a detrimental effect on the viability of BSG's sixth form and of other developing post-16 provision in the area.

Equalities

- c. There is already a number of options available to young people seeking co-educational provision at sixth form level. BS and BSG are the only schools providing young people with the opportunity to study post 16 in a single-sex environment. The move has the effect of reducing the choice available to students at the age of 16.
- d. The Equality Act 2010 allows a single sex school to admit students of the opposite sex provided that "...their admission to the school is exceptional, or their numbers are comparatively small or their admission is confined to particular courses or classes." The admission of an additional 50 students to a year group of 150 cannot be regarded as "comparatively small". There is no intention to restrict their admission to particular courses.

Consultation

- e. Although the proposed arrangements were displayed on BS's website for the requisite period, this did not draw attention to the significant change proposed, so that readers had to go to the full draft arrangements in order to see what was proposed.
- f. BS relied on the web-based consultation and did not take adequate steps to ensure that the range of parties likely to be interested in the arrangements (as set out in the Code) were made aware of the changes.

Related Case

- g. The objectors have referred me to a decision made by another

Adjudicator to uphold an objection to a proposal to admit girls to the sixth form of a Voluntary Aided boys' school in Warwickshire in 2003.

Bournemouth School Admissions Forum

10. The Forum's objection argues that the arrangements are unfair for the following reasons.

- a. They remove the option of single sex learning environment from boys, whilst it continues to be an option for girls and their parents.
- b. By reducing the number of places available exclusively for boys, the arrangements limit the availability of places for boys who would otherwise have had the option of taking up places in the BS sixth form on transfer from other schools.

Comments by Bournemouth Borough Council

11. The Borough Council has written expressing some reservations about the arrangements, but also expressing the view that they are compliant with the Code and associated legislation.

12. It considers that there is adequate Level 3 provision across post-16 providers in the area without any changes at the grammar schools. Further it fears the change at BS is likely to precipitate an end to collaboration between sixth forms with an identical ability-range, potentially damaging the preservation of minority subjects.

Response by Bournemouth School

13. In response to the objections BS makes the following principal points.

Need for Places and Efficient Use of Resources

- a. Whilst BS accepts that there will be a decline in post-16 student numbers over the next few years, it does not accept that this decline will be significantly greater among girls than boys. BS stresses that its proposal will not add to the number of post-16 places it offers to new entrants to Year 12.
- b. The decline in student numbers, combined with the impact of new post-16 provision in the Borough and continuing competition from schools and colleges in neighbouring areas, makes it essential that schools position themselves to be as attractive and competitive as possible. BS believes that this will principally be achieved by focusing on standards and achievement; but also by making schools accessible to the widest possible range of qualified students.
- c. BS questions the efficiency and effectiveness of the collaborative arrangements which operated between BS and BGS until 2011. It considers that the arrangements it has now adopted will be more secure, capable of stronger quality assurance, and make better use

of resources which it now has, including appropriate specialist staff.

Equality

- d. BS rejects the argument that the admission of a number of girls to its sixth form will have the effect of removing a single-sex option for boys post-16. The school will not be changing its character; it will continue to be a boys' school. For many years boys and girls in the sixth form have been taught together within the collaborative arrangements which have existed between BS and BSG, and which BSG purport to want to re-introduce.
- e. The revised arrangements do not provide for the admission of 50 girls to the school's sixth form at the beginning of Year 12, but for 50 students with places allocated on the basis of criteria which are gender neutral.

Consultation

- f. BS conducted its consultation through the processes operated by the Borough Council. In addition the school's community was alerted to the proposed change through the school's newsletter in November 2011, and Headteachers of neighbouring schools were advised of the proposals in letters from the Head of BS in November and December. Several schools responded to the consultation. There can be no question that BS was anything other than open in consulting on its proposals.
- g. When the governing body considered the arrangements it took careful account of the responses it received, making a number of amendments, although not to the provision now objected to.
- h. The changes were given coverage in the local press which did not lead to any objections from the wider public.

Other Matters

14. In reviewing the arrangements, including the application form which BS uses for applications for admission to its sixth form, I have noticed a number of points at which they do not comply with the Code. It is important to stress that the provisions of the Code apply to admissions to a sixth form as they do to admissions at Year 7. These matters are considered in more detail below.

Consideration of Factors

15. Some of the arguments submitted are beyond my jurisdiction. My function is limited to determining whether the arrangements objected to comply with the requirements of the Code. Although an Adjudicator may on occasion have to consider the need for school places if there is an objection to a reduction in a school's PAN, it is not for an Adjudicator to consider more general matters such as school place planning and use of resources, as they

are not dealt with in the Code.

16. The provisions of the Code which seem to me to have a bearing on these objections are those relating to consultation and equalities, and the associated legislation.

Consultation

17. I have seen ample evidence that BS conducted a more than adequate consultation on the admission arrangements it was proposing for 2013. It used the facility offered by the Borough Council to assist with this; took steps to ensure that schools potentially affected by the change were aware of it; and clearly gave consideration to the points made to it in response.

18. I understand the point made by BSG that BS ought to have done more to draw attention to a significant change. This point has some merit and it would have been better had BS done so, but this is not a basis for determining that the consultation was so flawed as to invalidate the conclusion which BS reached.

Equality

19. The Code makes it clear that all admission authorities must comply with all relevant legislation. In respect of the objections relating to equalities issues, the principal relevant law is the Equality Act 2010.

20. The objectors argue that the change introduced by BS has the effect of removing the option of single-sex education post-16 at a selective boys' school, and that this undermines parental choice and equality of opportunity.

21. The Equality Act 2010 prohibits a school from discriminating against a child in admissions on the grounds of his or her gender, but an exception is made in paragraph 1 of Schedule 11 of the Act allowing single-sex schools to admit children of a particular gender and to refuse to admit children not of that gender. The same Schedule permits a single-sex school to continue to discriminate on the grounds of gender (i.e. to continue to be regarded as a single sex-school) even where it admits some children of the opposite sex, so long as the admission of these children "... is exceptional, or their numbers are comparatively small and their admission is confined to particular courses or classes'.

22. In this case the admission of girls is limited to Year 12, and to a proportion of the 50 students to be admitted to the BS at that stage. The proportion in any one year will be determined by the application of the admission criteria, rather than any "quota". Bearing in mind that the BS admits 150 boys to Year 7, the majority of whom progress to the sixth form, I have concluded that the provisions of the Schedule to the Equality Act 2010 permit BS to admit girls at the beginning of Year 12, without affecting its status as a single-sex school, hence the availability of a single-sex option.

23. At a more practical level, I do not consider that the fact that a small proportion of the student population will be girls on the roll of BS is

significantly different from the model preferred by the objectors of boys and girls being taught together in BS with the girls being on the roll of BSG.

24. Nonetheless, it must be the case that any places allocated to girls will reduce the number of places available at BS for boys seeking to transfer to that school at the beginning of Year 12. On this point I have borne in mind that such places are not being reserved for girls: they are being allocated on the basis of a set of oversubscription criteria which do not take account of applicants' gender.

25. Furthermore, no individual school can be responsible for ensuring the adequacy of the range of school (including post-16) places. The objectors and the Borough Council have drawn attention to the growing range of post-16 opportunities in the area so that all qualified students can be reasonably confident of finding an appropriate course of study.

26. As an Academy BS is governed by an agreement between the school and the Secretary of State. Representatives of the Secretary of State have indicated their support in principle for the change allowing girls to be admitted to the sixth form, subject to its being properly introduced through the normal processes for determining admission arrangements.

Related Case

27. It is important to be clear that Adjudicators' decisions must be taken in the context of the particular circumstances of the objection(s) received and of the legislation and Code that apply at the time. They are not bound by decisions made by other Adjudicators.

28. I have nonetheless examined the determination made in the case referred to in the objection from BSG, to see whether there were any matters raised there which could have a bearing on the present case. There are a number of significant differences between the cases, not least the views of the bodies responsible for strategic planning of post-16 provision (in the 2003 case, the Learning and Skills Council and the Local Education Authority).

Other Matters

29. BS's admission arrangements include the following "up to 50 students (male and female) can be accepted into the Sixth form from other schools in addition to those Bournemouth School Year 11 pupils who achieve the Sixth Form entry requirements..." This clause, and the term "up to" in particular, implies a variable admission number. The Code at paragraph 1.2 requires an admission authority to publish an admission number for each "relevant age group", and to admit all qualified applicants up to that number, using the published oversubscription criterion to allocate places when there are more applicants than places. The arrangements need to be revised to reflect the requirements of the Code in this respect.

30. I have noticed a number of errors and inconsistencies in respect of the oversubscription criteria applied in the allocations of places in the sixth form. I draw attention to the following in particular.

- a. The Code requires oversubscription criteria to give highest priority to looked after and previously looked after children, which includes applicants for admission to the sixth form (Code paragraphs 1.7 and 2.6). This factor is not included in the oversubscription criteria listed.
- b. Although not referred to in the published arrangements, there are references in the sixth form prospectus and in the application form to filling places on the basis of the date an application is received. "Applications will be treated according to date of receipt if courses become full." This is not permitted (Code paragraph 2.9) and also in respect of a waiting list, "Priority must not be given to children based on the date their application was received..." (Code paragraph 2.14).
- c. The sixth form application form includes a section inviting candidates to set out details of their career ambitions, posts of responsibility, work experience etc. The inference must be that such matters are taken into account in determining the allocation of places. Paragraph 2.7 of the Code is clear that places must be allocated on the basis of determined arrangements only. The information sought in section 6 of the form is irrelevant to the school's oversubscription criteria and must not be sought as part of the admissions process. The prohibitions in paragraph 1.9 of the Code apply to admissions to the sixth form as much as for any other year of admission.

31. The application form requires the signature of both the applicant student and his/her parent. This is not appropriate as it is possible for an applicant for a post-16 place to make the application on his/her own account. The absence of a parent's counter-signature should not be taken into account when allocating places.

32. In order to take a view on these matters I have had to consider the contents of the published arrangements, the school's prospectus and the sixth form admission form (all of which form part of the arrangements (Code footnote 4). The Code requires admission arrangements to be published on the school's website. It would be much clearer for applicants if all these documents were to be found in one place on the school's website. It is not acceptable that applicants have to search in different places for the necessary information.

Conclusion

33. In the light of the considerations set out above, I have concluded that, although the objections made to the arrangements made by BS for admissions to its sixth form in 2013 cannot be supported, those arrangements are not fully compliant with the Code. The school needs to revise its sixth form admission criteria and associated documentation thoroughly in the light

of a careful reading of the Code, taking account in particular of the considerations set out in paragraphs 29 – 32 above.

Determination

34. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of Bournemouth School for admissions in 2013.

35. I have also considered the arrangements for admission to the sixth form of Bournemouth School in accordance with section 88I (5) of the same Act, and have determined that they do not comply with the requirements relating to admission arrangements as set out in paragraphs 29 – 32 of this determination.

36. By virtue of section 88K (2) an 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: 20 September 2012

Signed:

Schools Adjudicator: Andrew Baxter