

Report

on an investigation into
complaint no 10 004 884 about
Bishop Vesey's Grammar School for Boys

22 September 2011

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of documents and interviews with relevant employees of the School.

The complainant and the School were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Subject

Education: school admissions

A parent, Mrs K, appealed to an Independent Appeal Panel for her child to have a place at a selective voluntary aided grammar school. She then complained to the Ombudsman about the way that the School and the Panel dealt with her appeal.

The investigation found that the way the appeals were arranged and conducted amounted to maladministration. The Ombudsman concluded that the Clerk to the Governors was involved to a far greater extent in the appeal process than he should have been. The Ombudsman found that the lack of training provided for the Clerk and Panel members were significant factors in the maladministration that occurred in the appeal hearing.

The maladministration by the School and the Independent Appeal Panel has caused Mrs K the injustice of her appeal not being treated properly, fairly and in accordance with the law. It is likely other parents who appealed also suffered similar injustice.

The Ombudsman's investigators interviewed the Chair of Governors, the Clerk to the Panel and Panel members. From these interviews the Ombudsman has been able to piece together how the appeals were organised and how the Panel conducted the decision making process and reached its decisions.

The School initially agreed to arrange a fresh appeal but has now reneged upon that agreement saying that Mrs K's personal case was weak and that the proper decision was made. This is a decision for an Independent Appeal Panel to make after following the correct process and giving proper consideration to all relevant information.

The School now argues that it is too late to offer new appeals as boys will be settled in other schools. This is not a reason to refuse to offer parents the opportunity of a fresh appeal. It should be for the parents, not the School, to decide whether an appeal would be disruptive.

I have found maladministration in the School's failures to comply with the Appeals Code:

- Providing notes written by the Clerk to the Governors that are likely to deter appellants.
- Involving the Clerk to the Governors in the administrative arrangements for the appeal hearings.
- Failing to meet reasonable requests for the provision of information relevant to an appeal.
- Failing to provide the prejudice argument to the Panel and appellants in the required timescale in advance of the hearing.
- Failing to ensure that the prejudice statement contained the required information.
- Failing to provide adequate training for Panel members and the Clerk to the Panel.
- Failing to provide the Panel with the correct advice about the requirements of the Code in the hearing
- Failing to provide the Panel with the correct guidance about the proper approach it should take to its decision making
- Issuing a decision letter that did not explain in enough detail the Panel's decisions and why an appeal was unsuccessful, and
- Issuing a decision letter and that was not signed by the Clerk to the Appeal Panel or the Chair.

I have found maladministration in the Independent Appeal Panel's failures to comply with the Appeals Code:

- Failing to consider the prejudice argument at each appeal, or to hold a grouped multiple appeal;
- Failing to consider all the appellant's grounds of appeal in the appeal hearing.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommends that the Governing Body of the School:

- Offers fresh appeals to all the parents who appealed in 2010 and whose sons achieved a mark above 318. The appeals should be heard by a Panel composed of people who have been trained in the requirements of the Code and should be clerked by someone with knowledge and experience of school admission appeals.
- Pays £200 to Mrs K in recognition of the additional time and trouble she had as a result of its failures to provide her with the information she requested in order to prepare her appeal and in pursuing her complaint.

Introduction

The complaint

1. Mrs K complains about the way the Admissions Appeal Panel considered her appeal against the decision not to offer her son a place at the school. Specifically:
 - guidance notes provided at the beginning of the appeal process by the Clerk to the Governors were designed to deter appellants by referring to grounds of appeal that past Appeal Panels have not considered relevant.
 - the School did not provide information she requested in order to prepare her case and answered only one of a number of her questions.
 - the School did not provide a written statement before the hearing of why admitting more than 124 pupils would prejudice the efficient education of their pupils or the efficient use of resource.
 - the appeal was held at the School, and not at a neutral venue.
 - the letter informing her that her appeal had been unsuccessful was signed by the Clerk to the Governors.
 - the decision letter does not explain why her appeal was unsuccessful and seems to be a generic letter not specific to her son's appeal.
 - the Panel and the Clerk did not appear to be familiar with the School Admission Appeals Code (the Code).
 - the Clerk to the Panel was not independent as he works at the same firm of solicitors as the Clerk to the Governors.

Legal and administrative background

2. There are statutory Codes governing School admission arrangements and appeals. Admission authorities and Independent Appeal Panels must comply with the mandatory elements of the Codes. They should also comply with the advisory elements or record a cogent reason for not doing so.

Background

3. The School is a selective voluntary aided grammar school for boys and is its own admissions authority.

4. The published admission number for the School is 124. The School selects applicants using an entrance test with a qualifying mark in 2010 of 318. Those achieving the highest mark above the qualifying mark are admitted in descending order until 124 places are filled. If fewer than 124 applicants meet the qualifying mark of 318 the School can leave places unfilled.
5. In 2010 the lowest score of a boy offered a place was 325. There were boys who had reached the qualifying mark but were not offered a place.
6. Mrs K's son TK scored 319. He had qualified but 124 boys had qualified with marks above 325 and he was not offered a place. Mrs K appealed against that decision.
7. As TK had reached the qualifying mark in the test the Appeal Panel had to decide if the School had properly applied the published admission criteria to Mrs K's application; if the School had proved that additional children would cause prejudice to the efficient education of pupils or use of resources and if Mrs K's reason for wanting TK to attend the School outweighed any prejudice.

Investigation

The notes sent prior to the appeal

8. The School Admission Appeals Code says:
 - *2.6 – Admission authorities **must not** allow letters and information for parents.....to limit the grounds on which they can make their appeal.....Admission authorities **must not** allow the letters to comment on the likelihood of success, although reference can be made to the percentage of appeals that have been successful nationally or in the local authority area and the relevant School in previous years.*
9. The Clerk to the Governors has written and sends out notes to those considering making an appeal. These notes refer to an "Agreement" between the School and the Council to fill up to 124 places each year. The notes go on to say that the Appeal Panel "is bound by the terms of the Agreement... and the circumstances in which an appeal can be successful are very limited indeed". The notes then list matters that Appeal Panels have considered to be irrelevant to their decision, such as nerves on the day of the test; excellence in sport, a particular subject or extracurricular activities; or having an older brother at the school.

10. The notes say “These notes are not intended to discourage parents from appealing; which is their right by law. They are my own comments based on the experience of arranging appeals for several years and are intended to correct any misunderstanding which parents may have.”

Finding

11. These notes, by suggesting the Appeal Panel is bound by the agreement to fill 124 places and by listing the grounds of appeal that have been deemed irrelevant in the past, are likely to deter appellants and are in breach of the requirements of paragraph 2.6 of the Code.

Mrs K’s requests for information prior to the appeal

12. The School Admission Appeals Code says:
 - *2.12(b) To allow appellants to prepare for the appeal hearing, the admission authority **must** provide appellants with the following information at least three working days before the hearing:*
 - *all the information reasonably asked of it by the appellants*
13. On 8 April Mrs K asked the Clerk to the Governors 18 questions including why TK’s application had been unsuccessful; the number of admissions and admission on appeal to year 7 in the previous 5 years; the School’s net capacity; any changes in the school since the net capacity was last reviewed; how many teachers there were; and the pupil teacher ratio.
14. The Clerk to the Governors replied on 21 April explaining why TK had not been offered a place. He said that this answered all the questions relevant to the appeal. He said the appeal would be based on circumstances personal to her son and the School had neither the time nor resources to deal with “*extraneous*” questions.
15. Mrs K was not satisfied and on 25 April wrote again with the same 18 questions, drawing the Clerk’s attention to the Code and her right to the information under paragraph 2.12.
16. The Clerk to the Governors responded that her questions were irrelevant to the appeal and it was not reasonable to ask for irrelevant information.

Finding

17. Mrs K’s requests for information were reasonable and relevant to her case that the School had not demonstrated prejudice. The School’s refusal to provide all the information requested was in contravention of the Code at 2.12(b).

The provision of the prejudice argument

18. The School Admission Appeals Code says:
- *2.20 The admission authority **must** supply the clerk to the appeal panel with the documents listed below at least ten School days before the hearing.....
(b) a written statement summarising the reasons for the decision....., explaining how the admission of an additional child would cause prejudice to the provision of efficient education or use of resources.... The admission authority **must** include a summary of the School's net capacity....Admission authorities' statements referring to accommodation, class sizes, capacity etc **must** be supported by factual information.....*
 - *2.21 It is the Clerk's role to send out appeal papers to appellants, the presenting officer and panel members at least seven working days before the hearing (not including the date of the hearing or of sending out the papers)....The appeal panel **must** ensure that the papers that have been issued to the parties are complete and comprehensive....*
19. The Panel and the appellants were not provided with the School's prejudice case prior to the appeal. The case is dated 16 June 2010, the day of the appeal.
20. The minutes of Mrs K's hearing say that the School's presenting officer (the Head Teacher) produced a written statement and a copy was given to Mrs K to read. It was then decided that a copy of the statement should be given to all appellants when they arrived.
21. Mrs K asked why this had not been provided to her before, particularly in the light of the questions she had sent to the School. The Clerk to the Panel advised the Panel that under paragraph 2.20 of the Code there was no obligation to provide the information as part of the appeal papers.

Finding

22. The failure to provide the prejudice argument to the Panel and Mrs K at least seven days in advance of the hearing was in contravention of the Code at 2.20(b) and 2.21. The advice from the Clerk to the Panel was wrong.

The consideration of the appeal – the School's case for prejudice

23. The prejudice statement was read to the Panel. It was a single paragraph containing a general statement about classroom capacity, that additional numbers would put pressure on students and teachers and that it ran counter to the school's aim of reducing class sizes. The second and final paragraph declared that admitting any additional students would be prejudicial to the school.

24. The Code stipulates that the statement must include a summary of the net capacity of the School and statements as to accommodation, class sizes, capacity etc must be supported by factual information.
25. The minutes do not demonstrate that any consideration was given by the Panel as to whether the admission of extra children would cause prejudice to the efficient education of other pupils or to use of resources. When interviewed all the Panel members said that the prejudice argument put forward by the School was adequate. As the School had already admitted 124 boys, the admission number agreed with the LEA, the Panel members felt they had little or no discretion in the matter.
26. The Clerk to the Panel said that, in his experience, the prejudice argument was always difficult as the School felt bound by the planned admission number of 124 and were frightened of possible breach of contract issues. The Clerk to the Governors expressed the same view in a letter to the Ombudsman '*For the Governors to admit more than 124 pupils would be a breach of contract and illegal*'.

Finding

27. The prejudice statement provided by the School does not contain the information required by the Code.

The consideration of the appeal – the two stage process

28. The School Admission Appeals Code says:
 - *3.35 In the case of applicants who have been refused admission to a particular School because there are more eligible children than places available and other oversubscription criteria have been applied a panel **should** follow the two-stage process.*
 - *3.9 Panels **must not** make decisions on individual cases until all appellants have been given a reasonable opportunity to be involved in the process.*
 - *3.12 Grouped multiple appeals are where the presenting officer's case in respect of the School is heard once for the first stage of the appeal in the presence of all the appellants, including any representatives, who may question the case.*
 - *3.14 ...In these circumstances, the panel will hear the admissions authority's case repeatedly for each appellant. Where there are large numbers of appeals it **should** hold grouped multiple appeals.*

29. Each of the 30 Appeals was held separately. The prejudice argument was considered as part of Mrs K's appeal. The Clerk to the Governors scheduled Mrs K's appeal as the first of the day as she was the only parent who had raised this as an issue. According to the Clerk to the Appeal Panel, the result was then conveyed to all the other people appealing, who were asked if they had any questions. The prejudice case was questioned in one other appeal that day. A Panel member confirmed at interview the prejudice case was only considered once by the Panel. The School says the Clerk's notes for each appeal are divided into Parts 1 and II, with Part I dealing with the prejudice issue.

Finding

30. The Code clearly states that the panel should hear the admissions authority's case for each appellant. The Clerk to the Panel and a panel member say that this did not happen. The failure to properly consider the prejudice argument at each appeal, or, alternatively, to hold a grouped multiple appeal contravenes the Code.
- 1.26 The Clerk's role is to:
 - a) make the necessary administrative arrangements for hearings
31. The involvement of the Clerk to the Governors in determining the scheduling of appeals to the Independent Appeal Panel breaches the Code at 1.26

The consideration of the appeal – attention to Mrs K's case

32. The School Admission Appeals Code says:
- 3.6 *...the panel **must** consider whether the appellant's grounds for the child to be admitted outweigh any prejudice to the School. The panel **must** take into account the appellant's reasons for expressing a preference for the particular School....*
 - 3.36. *(for grammar school appeals) In addition...an appeal panel may be asked to consider an appeal where the appellant believes that the child did not perform at their best on the day of the entrance test and, as a consequence, did not reach the required academic standard.*
 - 3.37 *...the panel **should** consider any factors which appellants contend may have affected the child's performance; In determining to uphold an appeal, the panel **must** be satisfied that there is evidence to demonstrate that the child is of grammar school ability and, where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.*
33. The minutes of the second stage of Mrs K's hearing only refer to her argument about the School's ability to best meet TK's sporting requirement. Her 7 page

written statement includes information about his academic ability; his interest in languages and the performing arts; travel difficulties he would face if he went to another school, friends and relatives who would be attending the School, and his familiarity with the School. There is no record that the Panel considered these issues when reaching its decision.

34. There is no record of any consideration given or decision on Mrs K's argument that her son's performance in the tests was affected by lack of sleep.

Finding

35. The Appeal Panel's failure to consider all Mrs K's grounds of appeal does not comply with the Code at 3.6, 3.36 and 3.37.

The decision letter

36. The School Admission Appeal Code says:

- *2.36 The panel chair or the clerk to the panel (not someone from the admission authority) **must** sign the decision letter, to be sent by the clerk as soon as possible after the panel has made its decision...*
- *2.37 The panel **must** ensure that the letter is expressed clearly without the use of jargon, to enable parties to see what matters were taken into consideration;*
 - *understand what view the panel took on questions of fact or law which the panel had to resolve; and*
 - *know broadly on what basis the appeal panel reached its decision and, in the case of the unsuccessful party, enable them to understand why they did not succeed.*
- *2.38 The panel chair **must** ensure that the letter reflects the type of appeal that was considered:*
 - *in the case of other appeals, making reference to the two-stage process... where applicable;*
 - *contains a summary of relevant factors that were raised by the appellant and considered by the panel along with a summary of any legal advice the panel sought, especially if this advice was received after the panel retired to make its decision;*
 - *explains how, and why, any issues of fact or law were decided by the panel during the hearing, for example whether an appellant lived at a particular address; and*
 - *gives clear and detailed reasons for the panel's decision, addressing the key questions that the panel considered.*

37. The decision letter sent to Mrs K says

“I regret that the decision of the Appeal Panel was to reject your appeal. The reason for this decision was that the panel decided that the admission of additional children could result in prejudice to the School and, after considering all the information and mitigating circumstances which you put to them, they also decided that your grounds for admission to the School did not outweigh the prejudice to the School.”

Finding

38. The decision letter was signed by the Clerk to the Governors and does not comply with the Code at 2.36.
39. The letter does not explain in sufficient detail why Mrs K’s appeal was unsuccessful and does not therefore comply with the Code at 2.37 and 2.38.

The venue

40. The School Admission Appeals Code says:

- *2.23 To ensure independence in the appeals process, a neutral venue other than the School concerned **should** be used for the appeal hearing wherever possible.*

41. The appeals were heard at the School. The Clerk to the Governors says that the Governors have never agreed with this suggestion in the Code. As its own admission authority the School has no resources for this expenditure. He says the School is the best place for the appeals because of the proximity of paperwork which may be necessary, and the access to a telephone and copying facilities which may be needed.

Finding

42. The use of a neutral venue is not mandatory. The Code requires the Admission authority to demonstrate that they are justified in not complying with its advisory elements.

Training

43. The School Admission Appeals Code says:

- *1.32 Admission authorities **must** arrange and fund training for appeal panel members covering the specific functions of their role as described in this Code and in accordance with the requirements in the Appeals Regulations (see paragraph 1.33). Panel members*

***must not** take part in hearings until they have received appropriate training. Admission authorities **must** ensure that clerks appointed to panels have received appropriate training.*

44. By interviews my investigators established that only the Chair of the Panel had received any formal training. The Clerk to the Panel said that he had received no training for his role because he was doing it temporarily. He has, however, been Clerk since 2007 with a role limited to clerking the hearings and he has had little or no involvement in making the arrangements or communicating the decisions.

Finding

45. The Governors' failure to arrange training for Panel members and the Clerk to the Panel contravenes the Code.

The independence of the Clerk to the Panel

46. The School Admission Appeals Code says:

- *1.20 The clerk is not a member of the panel but has an important part to play in ensuring that all relevant facts are established and that the appeal hearing is conducted in a fair way.*
- *The admission authority **must** appoint a Clerk who is independent of the School and the education or children's services department of the local authority.*

Finding

47. The Clerk to the Panel is employed at the same firm of solicitors as the Clerk to the Governors. The Clerk to the Appeal Panel is not an employee of the School or of the Local Authority. The Code has not been breached.

The overall response to the complaint

48. On 29 July 2010 my investigator told the School she needed to interview the Panel members, the Clerk to the Panel and the Chair of Governors. The School eventually gave a date of 28 September.
49. At interview the Chair of Governors accepted that the Code had been contravened on several occasions, apologised and said he would accept any recommendation from the Ombudsman to put this right. He agreed to offer new appeals if necessary; and review processes and procedures.
50. The School was notified of my provisional findings and recommendation that fresh appeals be offered to Mrs K and all other unsuccessful appellants. I also suggested that the School review its processes and procedures for admissions to

ensure they complied with the Code. The Chair of Governors wrote accepting the suggested views and settlement.

51. Protracted correspondence then ensued with the School for a date when the new appeals would be heard.
52. The Clerk to the Governors subsequently wrote to say the School did not now agree. He said that any breaches of the Code had been minor and had caused no injustice to Mrs K as the decision *“the original appeal panel came to was the only right and proper decision that any panel would make; the decision was not tainted by procedural irregularities and the appeal was entirely without substance”*.
53. The School will not arrange new appeals and says that many aspects of the Code are too onerous for a grammar school that is its own admission authority.
54. From September 2010 the School has confirmed that Birmingham City Council will conduct appeals.

Findings

55. It is not a breach of the Code for the Clerk to the Panel to be employed by the same firm of solicitors as the Clerk to the Governors.
56. It is not mandatory for the appeals to be held in a neutral venue.
57. I have found maladministration in numerous failures to comply with the Code:
 - The notes provided by the Clerk to the Governors are likely to deter appellants and contravene paragraph 2.6.
 - The School’s refusal to meet Mrs K’s reasonable requests for information relevant to her appeal contravenes paragraph 2.12(b).
 - The School’s failure to provide its prejudice argument to the Panel and Mrs K at least seven days in advance of the hearing contravenes paragraph 2.20(b) and 2.21. The Clerk wrongly advised the Panel that the School was not required to provide its prejudice argument in advance of the hearing.
 - The prejudice statement provided by the school does not contain the information required by paragraph 2.20.
 - The failure to consider the prejudice argument at each appeal, or to hold a grouped multiple appeal contravenes paragraphs 3.35, 3.9, 3.12 and 3.14.

- The involvement of the Clerk to the Governors in determining the scheduling of appeals to the Independent Appeal Panel contravenes the requirement that the Panel should be independent of the Admissions Authority.
- The Appeal Panel's failure to consider all Mrs K's grounds of appeal contravenes paragraphs 3.6, 3.36 and 3.37.
- The letter was signed by the Clerk to the Governors and does not comply with paragraph 2.36.
- The letter does not explain in enough detail why Mrs K's appeal was unsuccessful and does not therefore comply with paragraphs 2.37 and 2.38.
- The Panel members and Clerk to the Panel had not received adequate training in their roles and responsibilities in contravention of paragraph 1.32.

58. The extent to which the Clerk to the Governors is involved in the appeal process is a breach of the Code and maladministration. He is entitled to his opinion that the Code is too onerous for grammar schools but the School is not entitled to ignore its provisions.

59. The Clerk to the Governors believes that it would be a "*breach of contract and illegal*" for the Governors to admit more than 124 boys in Year 7. This 'breach of contract' position has been communicated to the Independent Appeal Panel. They seem to have felt bound that no more than 124 pupils should be admitted and to have been frightened of possible 'breach of contract' issues if further children were admitted as a result of successful appeals. This is clearly incorrect as Independent Appeal Panels must decide, without fettering their deliberations, whether a school can accept more children than the published admission number without causing prejudice to efficient education or use of resources and whether a parent's reasons for preferring a particular school outweigh any such prejudice.

Injustice

60. The maladministration by the School and the Independent Appeal Panel has caused Mrs K the injustice of her appeal not being treated properly, fairly and in accordance with the law. Other parents who appealed are likely to have suffered similar injustice.

61. Regrettably, the School reneged on its initial agreement to arrange a fresh appeal and now says that Mrs K's personal case was weak and so the proper decision was made. This is a decision for an Independent Appeal Panel to make after

following the correct process and giving proper consideration of all relevant information.

62. The School now argues that it is too late to offer new appeals as boys will be settled in other schools. This is not a reason to refuse to offer parents the opportunity of a fresh appeal. It should be for the parents, not the School, to decide whether an appeal would be disruptive.

Recommended remedy

63. I recommend that the School should offer fresh appeals to all the parents who appealed in 2010 and whose sons achieved a mark above 318. The appeals should be heard by a Panel composed of people who have been trained in the requirements of the Code and should be clerked by someone with knowledge and experience of school admission appeals.
64. I also recommend that the School should pay £200 to Mrs K in recognition of the additional time and trouble she had as a result of its failures to provide her with the information she requested in order to prepare her appeal and in pursuing her complaint.

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