

Education Report: Options following the Judicial Review decision about the closure of Salisbury School

Executive summary

1. This report responds to your request for options for the future of Salisbury School following the High Court judgment of 11 December 2012. It provides you with the key considerations for the future of the school, a timeline, and our recommended approach.
2. The Board of Trustees of Salisbury School applied for a judicial review of your decision of 31 October 2012 to close the school on the grounds that it believed the Minister had acted unlawfully under section 98 (2) of the Education Act 1964, in that you failed to consider sufficient provision had been made.
3. The judicial review was heard in the High Court on 27 November and the reserved judgment was made on 11 December 2012.
4. Two challenges succeeded:
 - that Halswell would not be able to take a significant number of girls in 2013 in comparison to the number of boys expected or projected, as the number of girls enrolled must be a minority to maintain the single sex nature of the school
 - the potential for the girls to be at greater risk of sexual abuse if enrolled residentially at Halswell.
5. The Ministry has identified a programme of work that needs to be carried out before further options for the future of Salisbury School and the residential special school network are considered. These are:
 - An in depth literature review of national and international research and programmes pertaining to this issue. This will be completed at the beginning of March 2013.
 - The commissioning of the Standards and Monitoring Service (SAMS), an independent not for profit organisation, to undertake an evaluation of the safety systems, processes and programmes at Halswell with a focus on safety for girls. This report will be finalised at the end of March 2013.
 - As the expanded Intensive Wraparound Service (IWS) will focus on supporting learners to attend their local schools it is expected that enrolments at the two residential schools for learners with complex behavioural needs associated with intellectual impairment will not meet the 2013 notional rolls (a total of 100). By term three of this current school year data regarding actual enrolments at the schools, IWS outcomes and learner numbers and demand for residential placements will be gathered. This data will be used to inform any future decision for the residential special schools network.

6. We recommend you progress the proposed plan for Halswell to take a minority of girls from mid 2013 (subject to a successful safety evaluation from SAMS). This would be in anticipation for Halswell to be co-educational in 2014. Before you can consider any option for Halswell to become coeducational, the Ministry will need to consult with Salisbury School as its roll may be affected by such a decision.
7. Options and further advice will be provided in an Education Report in April 2013.

Recommendations

We recommend that you

- a. **note** that the Ministry has commenced a programme of work to address the issues raised in the judicial review decision of 11 December 2012;
- b. **note** that options and further advice will be provided to you in April 2013; and
- c. **note** that consultation about Halswell Residential College becoming co-educational will commence with the Board of Salisbury School in February 2013.

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Purpose of report

1. This report responds to your request for options for the future of Salisbury School following the High Court judgment of 11 December 2012. It provides you with the key considerations for the future of the school, a timeline, and our recommended approach.

Background

2. In May 2012 the Ministry consulted widely on the future of residential special schools in the context of developing and extending the Intensive Wraparound Service (IWS). This service is for learners with complex behavioural, social, and education needs, and for those learners who also have an associated intellectual impairment.
3. On 23 August 2012 you made your preliminary decision that Halswell Residential College (to provide for learners with complex behavioural needs and intellectual impairment) and Westbridge Residential School (to provide for learners with complex behavioural needs) would remain open as national, co-educational schools.
4. Two residential specials schools, Salisbury School (Nelson) and McKenzie Residential School were to close.
5. Following the preliminary decision, an additional 28 day period was given for each of the Boards of the two closing schools to submit additional information to you. On 31 October 2012 you announced that you had upheld your preliminary decision.
6. The Board of Trustees of Salisbury School applied for a judicial review of this decision on the grounds that it believed the Minister had acted unlawfully under section 98 (2) of the Education Act 1964, in that the Minister failed to consider sufficient provision had been made.
7. The judicial review was heard in the High Court on 27 November and the reserved judgment was made on 11 December 2012.
8. The grounds of challenge and key issues raised in the judgment are:
 - That the Minister failed to make the section 98 threshold of sufficiency because a 'girl by girl' analysis of alternatives was not undertaken. The judge rejected their challenge and supported this aspect of the Minister's decision.

- That Halswell would not be able to take a significant number of girls in 2013 in comparison to the number of boys expected or projected. This challenge succeeded on the basis that the Act prevents a decision that puts at risk the single sex character of the school if the proportion of girls exceeds or is near to the number of boys.
 - The potential for the girls to be at greater risk of sexual abuse if enrolled residentially at Halswell. The judge was critical of the Ministry's advice to you when you asked specifically about the risk of sexual assaults as taking too narrow an approach to the available evidence about young people with intellectual impairment generally. The failure here is that the Minister required to consider the protection of girls from physical and sexual abuse if placed in the coeducational setting at Halswell, and that the Minister did not properly or sufficiently consider it.
9. You have asked for options for the future of Salisbury School following the High Court judgment of 11 December 2012. Key considerations for the future of the school are discussed below. An Education Report will be provided to you in April 2013 outlining the proposed options and the Ministry's recommended approach.

Key Considerations

Safety of girls with intellectual impairment in a coeducational residential school

10. Issues were raised at the High Court hearing regarding the safety of girls with intellectual impairment in a coeducational residential setting. The Ministry has commenced an in depth literature review of national and international research and programmes pertaining to this issue. This will be completed at the beginning of March 2013.
11. In addition, the safety of girls at Halswell Residential College, should the College be allowed to take them in 2013, was a key component of influence on the High Court decision. The Ministry has commissioned the Standards and Monitoring Service (SAMS), an independent not for profit organisation with evaluation experience in the disabled sector since 1979, to undertake an evaluation of the safety systems, processes and programmes at Halswell with a focus on safety for girls. This report will be finalised at the end of March 2013.
12. These two pieces of work will address the issues raised in the approach and evidence provided to you when considering the protection of girls from abuse in a coeducational setting.

Redevelopment of Halswell

13. The Board of Halswell has indicated that it stands by its decision for the school to take girls and we recommend you progress the proposed plan for Halswell to take a minority of girls from mid 2013. This would be subject to a successful safety evaluation from SAMS and any identified gaps being addressed.

14. For Halswell to be coeducational in 2014, you would need to consider and agree to this before August 2013. However, before you can consider any option for Halswell to become coeducational, the Ministry will need to consult with Salisbury School as its roll may be affected by such a decision.
15. The Education Report in April 2013 will provide a summary of the SAMS safety evaluation report and the literature review of international research so that you can then reconsider Halswell firstly taking a minority of girls mid year and then becoming coeducational in 2014.

Data gathering

16. Due to the expansion of the IWS, there will be more information available regarding the learners who receive IWS support. We propose gathering information and data during 2013 to show the demand for enrolments in residential special schools in the context of the expanded IWS.
17. We expect enrolments at residential special schools to reduce as learners' needs are met by the IWS within their home communities and at their local schools. We will assess the demand from learners and their families for both the IWS and residential special schools.
18. All of this data will strengthen and inform any future decision for the residential special schools network, however much of the data will not be available until the third term of the 2013 school year.

Future of Salisbury School

19. Salisbury School remains open and there will be approximately 19 girls returning to the school at the start of 2013. The school's notional roll has been reduced to reflect its 2012 enrolments and is now 40 girls. Funding for 2013 will be based on this number of girls.
20. It is anticipated that enrolments will not increase to the notional roll of 40 through the 2013 school year.
21. There are now two single sex residential special schools for children with intellectual impairment. Halswell's notional roll for 2013 is for 60 learners, making a total capacity for 100 learners in 2013.
22. Approximately 30 learners are enrolled for the start of the 2013 year at these two schools, and it is not the intention of the Ministry to refer learners to residential special schools who can be provided support to attend their local school through IWS.
23. It is unlikely given the expansion of the IWS that either of these schools will meet full capacity in terms of their notional roll. The total residential funding for these two schools in 2013 will be \$5.25 million¹. By mid-year 2013 we will have information regarding actual enrolments and this information can be used in any future review of the residential special schools network.

¹ This amount does not include operational funding and salaries for teaching staff.

24. You can reconsider the decision to close Salisbury School in light of the additional evidence and advice the Ministry will provide. However this will be regarded as a new decision. As such a consultation process with the school's community will take place and the school's board can choose to review any adverse decision made through the judicial process.
25. In April 2013 the Ministry will provide you with options to consider the future of Salisbury School and the remaining two schools in the network.

Expansion of the Intensive Wraparound Service

26. The funding freed up from the closure of McKenzie School and the reduction in notional rolls for Halswell and Salisbury schools is in the process of being transferred to the IWS. This will allow the Ministry to employ up to 14 additional FTEs for the IWS and to increase the number of learners that will receive this service.
27. Learners with complex behavioural issues as well as those with an associated intellectual impairment who are identified as needing additional assistance will now be referred in the first instance to the IWS and will be assessed by the regional IWS facilitator. The focus will be to keep the learners in their home communities and attending their local school with an IWS plan. If the IWS plan identifies a need for the learner to have some time in a residential school then the IWS facilitator will work with the residential special school and recommend any referrals.
28. The new process for these learners will assist us to quantify demand for both the IWS and residential schooling as well as monitor enrolments in comparison to capacity at the schools.

Legislation

Risks

32. There are risks in reconsidering the options for the future of Salisbury School following the judicial review in terms of:
- Adverse public perception and high negative media response. To mitigate this risk we can address in depth the issues raised by the judicial review through the SAMS evaluation and literature review.
 - A further judicial review can be taken should a further decision be made to close Salisbury School. To mitigate this, experiential and tangible data and evidence will be gathered through 2013 regarding demand for services, actual enrolments, costs and IWS outcomes.
 - The safety of girls with intellectual impairment could still be a concern to the public. To mitigate this, the SAMS safety evaluation report and literature review will provide evidential support. There are disability and sector organisations who support the Ministry and a communications plan to convey the key messages will be developed to include their comments. Proactive communications will be developed in May 2013.
33. With a total of 30 learners enrolled for the start of the 2013 school year at Halswell and Salisbury schools at a cost of \$5.25 million in residential funding (excluding operational funding and teachers' salaries), this may not be the most appropriate allocation of this funding for this group of learners given the expanded IWS. This can be mitigated through reviewing the schools actual enrolments, demand for residential placements and outcomes and statistics from the IWS mid year.

Financial implications

34. As discussed above, residential special schools are a high cost intervention. Data and evidence gathered during 2013 will assess the benefit cost of the remaining residential schools in comparison to the outcomes and costs of the IWS.

Conclusion

35. The Ministry has identified a programme of work that needs to be carried out before further options for the future of Salisbury School and the residential special school network are considered.
36. This work will address issues raised by the judicial review and gather additional data and evidence to inform your decisions.
37. Options and further advice will be provided in an Education Report in April 2013.