

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan.

REPORT OF THE CHIEF EXECUTIVE TO CABINET ON 27 JULY 2016

LOCAL GOVERNMENT OMBUDSMAN REPORT WITH A FINDING OF 'FAULT CAUSING INJUSTICE'

1. PURPOSE OF REPORT

- 1.1 To report on the publication of a Local Government Ombudsman report finding fault causing injustice in relation to a school admissions appeal and to set out the action taken as a consequence. Cabinet is required to consider the Local Government Ombudsman's report in accordance with Section 5A of the Local Government Housing Act 1989.

2. RECOMMENDATIONS

- 2.1 **That the Local Government Ombudsman's report be noted, together with the action taken to implement the recommendations in full.**

3. BACKGROUND

- 3.1 The Local Government Ombudsman has issued a report following her investigation of a complaint against the Council. The report of the Ombudsman appears at Appendix 1 to this report.
- 3.2 In summary, the Ombudsman has found that there was fault in the way that the Independent School Admissions Appeal Panel considered an appeal for a place in the reception year at a school in the Borough. As this appeal related to an infant class admission, any appeals are considered in the context that the law says there should be no more than 30 pupils per teacher in those classes. If parents are unhappy with the offer of the school they have received, the role of the Panel in considering any appeal is to consider whether:-
- Admitting another child would breach the infant class size limit.
 - The admission arrangements comply with the law and were correctly and impartially applied.
 - The decision to refuse a place was one which a "reasonable" authority would have made in the circumstances.

- 3.3 In these circumstances, for a Panel to uphold an appeal on the grounds that the original admission decision was unreasonable would require the Panel to consider that decision to be perverse or outrageous. As a result, it is rare that Panels find a decision to be unreasonable and, therefore, for an appeal to succeed in an infant class size appeal.
- 3.4 School admission appeals are normally held in two stages: the Panel considers evidence from the LEA and the school about the application of the admissions policy and the distribution of children to the various classes within the school in the presence of all parents; then, if the Panel is satisfied as to the application of the policy and the position of the school, each parent has the opportunity of an individual hearing on their specific circumstances. Generally, these individual sessions are given specific time slots. However, given the slim grounds on which a parent can win an infant class size appeal, individual time slots had not been provided, even though parents have been offered the opportunity to make representations. This is partly to achieve the best use of resources in scheduling appeal hearings but also to ensure that parents should not become overly optimistic about their chance of success.

4. THE LOCAL GOVERNMENT OMBUDSMAN'S REPORT

- 4.1 The Ombudsman has investigated a complaint by a parent that, in an infant class size appeal, they were not given the opportunity to present their individual circumstances. The Council and members of the Independent Panel have responded to the investigation by stating that the parent in question was indeed given this opportunity, but acknowledged that this was not clear from the procedural documentation used to guide appeal hearings and provided for the information of parents. The Council acknowledges also that the parent in question did not make any representations about their personal circumstances.
- 4.2 As a consequence, the Ombudsman considers that the procedure did not comply with the Code that governs the consideration of appeals and the Panel could not therefore have reached a proper decision in the case of the person complaining or any of the other cases heard that day. The Ombudsman has therefore found fault causing injustice with the way that the appeal was considered.
- 4.3 As a consequence, the Ombudsman has recommended that:-
- The Council should offer fresh appeals with a new Panel and Clerk to the complainant and the other three parents whose appeals were considered that day.
 - The Council should remind Panel members and Clerks that appellants must be given an opportunity to put their individual cases to the Panel.
 - The Council should remind Panel members and Clerks that Panels must consider appellants' individual cases when considering the reasonableness of the admissions authority's decision to refuse a place.

- The Council should ensure that, although Panels are limited in what they may take into account, appellants are told that they may put forward any evidence they wish in support of their appeals.
- The Council should update its procedural documents and arrange any appropriate training to reflect the above.

4.4 The Council has accepted these recommendations in full and arrangements have been made to implement them for future infant class size appeals. This has included providing specific allocated slots to allow parents to present information on their own personal circumstances for consideration by the Panel. Indeed, given that the original appeals were held in June 2015, it was considered necessary to arrange for the appeals to be re-heard without further delay, even though the Ombudsman had not, at that time, concluded their investigation. It is worth noting that the complainant in this case in fact declined the offer of a further appeal because their child was settled in the school to which they had been allocated.

5. FINANCIAL AND EMPLOYEE IMPLICATIONS

5.1 Potentially, providing timed slots for parents to make their representations in infant class size appeals means that more time needs to be allocated to those cases, bearing in mind that in the past parents have often not sought to make individual representations. However, this can be contained within the current resource envelope.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no specific implications arising from this report. It was already usual practice to ask parents if they had any specific requirements, for example translation or interpretation services, when they submitted their appeal and reasonable provision is made in the process for this.

7. LIST OF APPENDICES

Appendix 1: Report by the Local Government Ombudsman.

8. BACKGROUND PAPERS

School Admissions Code of Practice and Policy and associated procedural documents prepared by the Council Governance Unit.

Available for inspection in the Legal and Governance Directorate, Town Hall, Barnsley. Telephone (01226) 773421.

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