

MAYOR AND CABINET			
Report Title	Response to CYP Select Committee referral on Sedgehill		
Key Decision	No	Item No.	
Ward			
Contributors	Executive Director for Children & Young People, Head of Law		
Class	Open	Date:	13 May 2015

Reason for urgency

The Constitution provides for Select Committees to refer reports to the Mayor and Cabinet, who are obliged to consider the report and the proposed response from the relevant Executive Director; and report back to the Committee within two months (not including recess). In accordance with the Code of Recommended Practice on Local Authority Publicity 2011 issued by the Department for Communities and Local Government , it was deemed that it would not be appropriate for this matter to be considered at a meeting prior to the general election on May 7th 2015 and therefore the report has only been published by the Council after this date.

1. Summary

- 1.1 Following a vote on 4th February 2015, the following recommendation was agreed by the Children and Young People Select Committee:

The Mayor is asked to review and consider the relevant part of the scheme of delegations so that where it proves that such interventions by the LEA into the governance of a school are contentious, decisions concerning the process can be considered by the Mayor and Cabinet; and that in taking such a decision consideration is given to consultation with ward councillors, parents, staff and other interested parties. The intention to issue a warning notice should indicate that the level of contentiousness to trigger this activity has been reached.

2. Recommendation

The Mayor is recommended to:

- 2.1 Agree that there should be no changes to the scheme of delegation regarding school intervention and for the response to be forwarded to the Children & Young People Select Committee.

3. Policy Context

- 3.1 Local authorities' statutory responsibilities for educational excellence are set out in section 13a of the Education Act 1996. That duty states that a local authority must exercise its education functions with a view to promoting high standards. Local authorities are discharging this duty within the context of increasing autonomy and changing accountability for schools, alongside an expectation that improvement should be led by schools themselves.
- 3.2 The statutory guidance for the DfE on Schools Causing Concern was updated in January 2015, but the core of the guidance remains as it was at the time of the intervention in Sedgehill.
- 3.3 The guidance sets out the local authority's role in relation to maintained schools that are causing concern. It sets out the importance of early intervention and of swift and robust action to tackle failure, including the use of Warning Notices and Interim Executive Boards (IEBs) in maintained schools.
- 3.4 The guidance states that Warning Notices should be used as an early form of intervention, particularly when standards are unacceptably low and other tools and strategies have not secured improvement.
- 3.5 Section 60 of the 2006 Act sets out the provisions relating to Warning Notices. A Warning Notice should be used where there is evidence to justify both the local authority's concerns and the school's reluctance or inability to address those concerns successfully within a reasonable time frame.

4. Background

- 4.1 Schools in Lewisham have improved significantly over the past five years and much of this has been achieved through the active and effective leadership and management of the system in partnership with strong school leaders. In April 2010, 74% of Lewisham schools were good and better, with 24% outstanding. The figures for April 2015 are 90% and 29% respectively.

- 4.2 As part of this active leadership, the school improvement service has intervened in many schools in order to improve rapidly the quality of education. These interventions have ranged from the input of additional leadership capacity to changes in leadership and to federate and develop partnerships between schools, supported by a Memorandum of Understanding.
- 4.3 Since 2010, not including Sedgehill, there have been interventions in 16 schools, which have led to a change in leadership and the establishment of a partnership. Some of these moved on to hard federations and others decided to revert to separate schools once the recovery had been successful. Three of these involved the establishment of Interim Executive Boards, but these were with the agreement of the governing bodies involved, as they recognised the need for the immediate strength of governance that an IEB can offer. One Warning Notice was issued without the establishment of an Interim Executive Board, because the governors appointed a new leader themselves whose appointment was endorsed by LA school improvement professionals, once the Warning Notice was issued.
- 4.4 The Local Authority School Improvement Service has a set of processes that have been agreed by all schools to fulfil its function of monitoring, challenge, intervention and support in order to ensure that provision is good and better across all schools.
- 4.5 These processes apply to all schools and are seen as important to support and challenge schools on their journey to high standards for pupils and an Ofsted judgement of Outstanding. However, the support and challenge activity is applied in inverse proportion to a school's success. So, as with Ofsted, the involvement in schools judged to be outstanding is often referred to as 'light touch', where the schools have twice yearly School Achievement reviews and additional support if the head is new and if it is bought in. At the other end of the spectrum, schools which are judged to be Requiring Improvement or Inadequate are in receipt of intensive support and potential intervention.
- 4.6 In addition to the support, additional monitoring takes place for those schools identified by school improvement professionals as schools causing concern and the service works closely with governing bodies to ensure that everyone is clear of what the school needs to do to improve.
- 4.7 This referral from CYP Select relates to schools causing concern. The school improvement service continues to work closely with schools causing concern to ensure that interventions are timely and preventative, where they can be. This means, for example, where a school has slipped down from a judgement of good, then there needs to be compelling evidence within one year, that the school is on a strong trajectory back to good and although highly significant, this cannot all hinge on end of Key Stage data alone. It is important to evidence that future outcomes will be secured without over-reliance on last minute interventions in Y6 or Y11.

5 The CYP Select Committee referral

5.1 The CYP Select Committee referral has 2 parts:

- a) Review the relevant part of the scheme of delegation so that where it proves that such interventions by the LEA into the governance of a school are contentious, decisions concerning the process can be considered by the Mayor and Cabinet;
- b) in taking such a decision, consideration is given to consultation with ward councillors, parents, staff and other interested parties. The intention to issue a warning notice should indicate that the level of contentiousness to trigger this activity has been reached.

5.2 On a) the issue is whether the Mayor should consider decisions likely to be contentious rather than officers making a professional judgement about how to intervene.

5.3 In any situation in a school where officers will be recommending the issue of a Warning Notice, the school will already be in some form of intervention by the School Improvement Service through challenge and support.

5.4 At the point where professional judgement indicates stronger intervention, it is almost certain to involve questions about the leadership of a school, either relating to the headteacher, the governing body or both. All such interventions are sensitive and, while none of the other 16 interventions in the past 4 to 5 years has resulted in a public campaign, realistically, there is no way accurately to judge whether that will happen or not.

5.6 Any process that prolongs the time it takes to implement the proposed solution identified within the intervention will have a lasting negative impact on the pupils that will in turn slow down recovery at any school.

5.7 Ofsted and the DfE have published clear procedures and time frames for a Warning Notice and the establishment of an IEB. To add to these at local level would mean a further delay to the resolution of any intervention. Where the need for strong intervention is less accepted by key stakeholders, this view has often changed as soon as new leadership has arrived and changes are made. It is the degree of uncertainty that can unsettle a school community more than the change itself.

5.8 At Sedgehill, the discussions that led to the Warning Notice being issued started in the spring of 2014. Once the results were known in August 2014, those discussions intensified. Officers were keen to bring the governing body on board to understand the need for more radical change than they thought was necessary. As indicated, this approach had worked in other schools, despite some concern by key stakeholders. If we had been required to bring a report to the Mayor and Cabinet prior to

issuing a warning notice, the Council processes added on to the statutory consultation processes required in any case by the Warning Notice, it would have meant, in the best case, a delay of well over three months before strengthened focus and leadership would have been in operation at the school.

- 5.9 For the reasons set out above, it is recommended that the professional judgement of those officers with the expertise and knowledge of school improvement should determine the extent and timing of school interventions and therefore the scheme of delegation should remain as it is.
- 5.10 Keeping the scheme of delegation as it is does not preclude the need for a strong communication strategy.
- 5.11 On b) the issue is whether wide consultation is needed prior to issuing a warning notice.
- 5.12 Prior to issuing a Warning Notice, there will be sensitive negotiations, which do not only involve the school concerned but also usually involve other schools, whom officers may have approached to bring in additional leadership capacity where needed. The heads of these schools also need to manage effective communication with their own governors and stakeholders.
- 5.13 Certain interventions do have a statutory consultation built in as part of the process. The Warning Notice itself gives the governing body three weeks to decide whether to appeal to OfSTED. The application to establish an Interim Executive Board specifies that the LA consults with the Governing Body. In this case, it would be inappropriate for the LA to consult with other stakeholders. In the case of a change in school status, there is also a statutory consultation process.
- 5.14 With school improvement however, this is the responsibility of the governing body and only becomes the responsibility of the Local Authority where there are grounds for statutory intervention. Even then there are established processes, where the governing body has a right to contest the reasons for the warning notice and then the final decision is made by Ofsted. If the resulting solution for an individual school were to be altered significantly as a direct result of wide consultation and did not then have the endorsement of school improvement professionals, there is a strong likelihood that the Secretary of State would intervene and bring in a DfE preferred solution, which would remove any local accountability.
- 5.15 At a local level there are also processes to ensure that actions taken by officers go through appropriate channels. There are regular meetings with the lead member to discuss schools causing concern and the possible solutions discussed.

- 5.16 Further to this, there are no set protocols for determining when a decision is contentious. In one case of intervention, the governing body agreed a course of action that was potentially contentious to a range of stakeholders. This course of action was soon praised by Ofsted and led to significant school improvement. In this case there was no warning notice issued and stakeholders were kept informed of developments at all times.
- 5.17 The proposal for wide consultation would bring with it a large number of questions and, as with the considerations for a) could potentially hinder the rapid improvement of a school. It is therefore recommended to use consultations where they are part of a statutory process and not add them to the scheme of delegation for school intervention. However, this again does not preclude the need for strong and effective communication with stakeholders.

6. Financial implications

- 6.1 There are no financial implications arising from agreement of the recommendations to this report.

7. Legal implications

- 7.1 The Constitution provides for Select Committees to refer reports to the Mayor and Cabinet, who are obliged to consider the report and the proposed response from the relevant Executive Director, and report back to the Committee within two months (not including recess).
- 7.2 Local authorities are required by section 13A of the Education Act 1996 to exercise their education functions with a view to promoting high standards. Part 4 of, and Schedule 6 to, the Education and Inspections Act 2006 set out that circumstances where a school is eligible for intervention.
- 7.3 Department for Education Guidance to which the local authority is statutorily required to have regard advises that where a school is exhibiting “unacceptably low standards of performance” a local authority issue a Warning Notice unless there is a particular reason not to do so. It further advises that a local authority should also consider issuing a Warning Notice in cases where a school has not responded robustly or rapidly enough to a recommendation by Ofsted to commission an external review of the use and impact of the Pupil Premium and/or an external review of their governance arrangements.
- 7.4 Warning Notices may be given by a local authority in one of three circumstances:
- the standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercise their powers under Part 4 of the Education and Inspections Act 1996; or

- there has been a serious breakdown in the way the school is managed or governed which is prejudicing ,or likely to prejudice, such standards of performance; or
 - the safety of pupils or staff at the school is threatened (whether by a breakdown of discipline or otherwise).
- 7.5 A maintained school will be eligible for intervention under the Education and Inspections Act 2006 where it has not complied with a warning notice and the local authority has also given a school written notice of the local authority's intention to exercise their intervention powers under the Act, or where a school has been judged by Ofsted to require "significant improvement" or "special measures".
- 7.6 Where a maintained school is eligible for intervention a local authority has powers under the Education and Inspections Act 2006 to:
- suspend the delegated budget of the school;
 - appoint an Interim Executive Board (IEB)
 - appoint additional governors; or
 - require a governing body to enter into specified arrangements with a view to improving the performance of the school.
- 7.7 The statutory Guidance specifies the importance of early intervention and use of swift and robust action to tackle failure which includes the use of Warning Notices and Interim Executive Boards in maintained schools; whenever necessary to get leadership and standards back up to at least "good".
- 7.8 Under the Mayoral Scheme of Delegation "all decisions relating to schools causing concern prior to authorization of the issue of a closure notice are delegated to the Executive Director for Children and Young People." However as set out in the body of this report regular meetings are held with the Lead Member for Children and Young People to discuss schools causing concern.
- 7.9 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.10 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.

- 7.11 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.12 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 7.13 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty
- 7.14 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8. Crime and disorder implications

- 8.1 There are no crime and disorder implications arising from this report.

9. Equalities implications

- 9.1 There are no equalities implications arising from this report.

10. Environmental implications

10.1 There are no environmental implications arising from this report.

Background documents

None.

If there are any queries arising from this report, please contact Sue Tipler, Head of Standards and Achievement, 0208 3147331.