

**NORTH YORKSHIRE COUNTY COUNCIL**

**REPORT TO ASSISTANT CHIEF EXECUTIVE (LEGAL AND DEMOCRATIC SERVICES)**

**17 November 2008**

**Institution of Proceedings for Judicial Review of the Schools Adjudicator's  
Determination on Admissions to Community Schools in Harrogate**

Appendix 3 to this report contains exempt information of the type defined in paragraph 5 of Part 1 of Schedule 12A Local Government Act 1972 (as amended).

**1.0 PURPOSE OF REPORT**

- 1.1 To brief the Assistant Chief Executive (Legal and Democratic Services) on the Schools Adjudicator's determination of 29 September 2008, Counsel's advice, and the proposals of the Treasury Solicitor's Office (on behalf of the Office of the Schools Adjudicator) ("the Proposals") to resolve the matter.
- 1.2 To seek approval from the Assistant Chief Executive (Legal and Democratic Services) to commence proceedings for judicial review of the Schools Adjudicator's determination.

**2.0 REPORT SUMMARY**

- 2.1 This report sets out information about the Schools Adjudicator's determination, the Proposals in response to a pre-action letter on 30 October 2008 on behalf of the Council and Counsel's advice both on the merits of a challenge to that determination and future action in the light of the Proposals.

**3.0 BACKGROUND**

- 3.1 A group of Harrogate parents referred an objection to the Schools Adjudicator about admission arrangements for community schools in Harrogate for admission in September 2009. The basis of the objection was the priority given to applicants from the Harrogate rural area over those from the Harrogate town area.
- 3.2 The current admissions arrangements have been in place since the 1970s. However two things have changed in 2008. The first is that Harrogate Grammar School has become even more popular. The second more significant change is that the LA has had to change the way it allocates parental preferences for schools because of guidance in the 2007 School Admissions Code ("the Code"). The LA had operated a system whereby school places were allocated within each oversubscription priority criterion on the basis of the ranked order in which parents had expressed their preferences, ie, first, then second, then third, and so on. However the Code prescribes that LAs must not "give priority to children according to the order of other schools named as preferences by their parents, including "first preference first" arrangements. Since the implementation of the Code, within each oversubscription priority criterion, all preferences are treated equally by the LA, regardless of the ranked order in which parents have expressed their preferences.
- 3.3 As a result of the above necessary changes, a small number of rural children in Harrogate receive a higher priority than there would have been under the previous system. The response of the LA to the objections is appended to this report as Appendix 1. It summarises in the final page, the LA's case.

- 3.4 The Schools Adjudicator made her decision on 29 September 2008. She upheld the objection. The Adjudicator determined that the current arrangements are not procedurally fair and are not equitable for all groups of children, that the current arrangements stand for admissions in 2009 but a full consultation on possible models for allocating places be conducted before determining the arrangements for 2010. The Adjudicator's decision is appended to this report as Appendix 2.

#### **4.0 LEGAL IMPLICATIONS**

- 4.1 Following determination of admission arrangements by the LA as admission authority under S89(4) School Standards and Framework Act 1998 ("the Act") a parent (of a prescribed description) may make an objection to the Schools Adjudicator about those arrangements under S90(2) of the Act. Under S90(3) of the Act the Schools Adjudicator may decide whether the objection should be upheld.
- 4.2 A challenge to the Adjudicator's determination is by way of an application for judicial review to the High Court.
- 4.3 The Assistant Chief Executive (Legal and Democratic Services) has delegated authority under paragraph 4.7(b) of the Officers Delegation Scheme to authorise the institution, defence, withdrawal or compromise of any claims or legal proceedings, civil or criminal.
- 4.4 The decision in relation to this matter is likely to be a key decision as it would be made in connection with the discharge of a function which is the responsibility of the Executive and which is likely to be significant in terms of its effects on more than one community.

#### **5.0 ISSUES AND DISCUSSIONS**

- 5.1 Counsel's advice was sought on the Adjudicator's decision. He believes there are grounds of challenge: that the Adjudicator has made errors, in that she has misconstrued her powers and has made an irrational decision. The advice of Counsel is appended to this report at Appendix 3. The pre-action letter which was sent on 30 October 2008 is at Appendix 4. It is believed that issues are raised by all possible different oversubscription criteria and that each will be regarded by some sections of the community as fair and by others as unfair. It is also a matter of debate whether any set of criteria is fairer than the current criteria.
- 5.2 Counsel believes that a challenge by way of judicial review stands a good prospect of success. The LA has concerns that alternative systems would also be perceived by some sections of the Harrogate community as unfair. Failure to challenge the Adjudicator's decision would mean that the current system would not be able to continue. CYPs Executive Members and the Corporate Director are in favour of seeking a judicial review of the Adjudicator's determination.
- 5.3 The Treasury Solicitor's Office replied to the pre-action letter on 12 November 2008 making the Proposals to resolve the matter, and agreeing that the Adjudicator has arguably acted outside her powers under S90 and S90A of the Act and that the determination should therefore be quashed and remitted in order that a fresh determination can be made.
- 5.4 Counsel's advice has been sought on the Proposals and the draft Consent Order. He has advised to respond with alternative terms of settlement.
- 5.5 Counsel also advises that proceedings for Judicial Review will still need to be commenced even though the Treasury Solicitor's Office is proposing settlement as the High Court would need to make any Order even if agreed by the parties by consent.

#### **6.0 RESOURCE/PERFORMANCE IMPLICATIONS**

- 6.1 Judicial review proceedings which are pursued to a final judgment can result in the incurrance of significant cost. Institution of judicial review proceedings will incur expenditure in relation to Counsel's fees. However, counter-proposals put to the Treasury Solicitor's Office would include a claim for the Council's legal costs. It is

anticipated that agreement would be reached at least on Counsel's fees. In any event the financial implications of this matter are out-weighed by the considerations set out above.

7.0 **CONSULTATION**

7.1 CYPs Executive Members were consulted on 24 October 2008 and agreed their support for taking the matter forward by way of a judicial review. The Director of CYPs has also indicated her support for such action.

8.0 **RECOMMENDATIONS**

8.1 It is recommended that the Assistant Chief Executive (Legal and Democratic Services) authorises the institution of judicial review proceedings in respect of the Adjudicator's determination of 29 September 2008.

Author: Alison Boddy  
Principal