



Report of the Assistant Chief Executive (Corporate Governance)

Executive Board

Date: 16 April 2008

Subject: School Admission Appeals Code

Appendix 1 is Not for Publication under Access to information procedure Rule 10.4 (5)

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

1. Purpose of Report

- 1.1 To ask Members whether they wish to consider a challenge to paragraphs within the School Admissions Appeals Code which currently limit the ability of elected Members to represent or act as witnesses for parents who appear before school admission appeals panels.

2. Background Information

- 2.1 Following a consultation exercise, on 17 January 2008, under section 84 of the School Standards and Framework Act 1998, the DCSF published the School Admissions Appeals Code. The Code is statutory guidance and imposes mandatory requirements with which the authority has to comply, and guidance with which the authority should comply unless it can demonstrate that it is justified in not doing so.
- 2.2 The two paragraphs set out below which relate to the role of elected Members are mandatory paragraphs with which the authority must comply.:

Paragraph 2.13 states:

"Parents **must** be advised that their 'friend' or adviser at a hearing cannot be a member of the local authority, a member of the admission authority concerned, or a local elected politician, as this may lead to a conflict of interests and place undue pressure on the panel. Choice Advisers may wish to support parents in preparing for

their appeal as part of their role in supporting parents with their secondary school choices. Where this is part of their locally agreed role, Choice Advisers may accompany parents to the appeal as an adviser but cannot present an appeal on their behalf. Where parents intend to be represented or accompanied they should inform the clerk in advance of the hearing. Panels **must not** treat appeals from unrepresented parents any differently from appeals from those that have representation.”

Paragraph 2.17 states:

“Members of the local authority **must not** be invited to attend appeal hearings as witnesses. Occasionally parents ask if their child can attend the hearing. As the appeal is about refusal of a parent’s statutory right to express a preference for a particular school, attendance can be distressing for some children and unless there are exceptional reasons children **should not** be invited to attend.”

- 2.3 Several elected members have expressed concern at the restrictions contained in paragraphs 2.13 and 2.17 which prevent Members from representing parents at school admission appeals and from acting as witnesses for parents. Counsel’s advice has been sought as to whether it is possible to mount a legal challenge in relation to the above paragraphs as the Members concerned consider that the Code prevents them from fulfilling their role set out in the Constitution as ward member dealing with individual casework and acting as an advocate for constituents in resolving particular concerns or grievances.
- 2.4 Counsel’s advice is set out in the exempt Appendix 1. The Appendix is exempt as in officers view the Appendix contains legal advice the disclosure of which prior to the commencement of any legal proceedings may prejudice the Council in progressing the matter and therefore the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.5 Experience shows that at this authority approximately 4 elected members in the past have regularly sought to represent parents.

3.0 Recommendations

- 3.1 Members are asked to consider whether they wish officers to contact the Secretary of State to express Members’ concerns at the relevant paragraphs and to seek an amendment to the Code to allow Members to represent parents and to give evidence at appeal hearings.
- 3.2 Subject to 3.1 above, if such approaches are unsuccessful officers are requested to bring a report to a further meeting of the Executive Board regarding considering mounting a legal challenge.