

## Brighton & Hove City Council

### For general release

**Meeting:** Education Overview and Scrutiny Panel

**Date:** Tuesday 7 February 2006

**Report of:** The Director of Strategy & Governance and the Director of Children, Families & Schools

**Subject:** School Admissions Review - Call-in

**Wards affected:** All

*The special circumstances for non-compliance with Council Procedure Rule 19, Access to Information Rule 5 and Section 100B(4) of the 1972 Local Government Act as amended (items not to be considered unless the agenda is open to inspection at least five days in advance of the meeting) are that (1) the meeting is a special meeting, convened at short notice under the call-in procedure, (2) under the procedure, as there was no ordinary meeting of the Panel due, a special meeting had to be convened within 7 working days of the acceptance of the call-in request and (3) all decisions on call-in requests should be made as soon as possible in the interests of good administration.*

### 1. Purpose of the report

- 1.1 To determine whether to ask the Children, Families & Schools Committee to reconsider its decision not to change the current secondary school admissions arrangements for 2007 (item 65 of the meeting of the Children, Families and School (CFS) Committee on 23 January 2006).
- 1.2 The main sections of this report are by the Director of Children Families & Schools and explain the background to the Schools Admissions Review decision; the issue; the request for call in; and the Director's explanation as to why he feels the decision should not be reconsidered.
- 1.3 Appendix 2 of the report gives the decision of the CFS committee, Appendix 3 the call in request, Appendix 4 the call-in procedure and Appendix 5 article 11.02 of the constitution.

### 2. Recommendations

- 2.1 To note the decision made by the CFS Committee on 23 January 2006, the call-in request and call-in procedure.
- 2.2 Having regard to the grounds for call-in, to determine whether to ask the CFS Committee to reconsider its decision.

### **3. Information/background**

- 3.1 The background to the current debate concerning secondary school admissions is set out in the paper which was discussed by the CFS Committee on 23 January 2006, which will be sent with the EOSP agenda as a separate enclosure. The decisions of CFS Committee are attached at Appendix 2 of this report. The Committee concurred with the recommendations of the Working Group, that, in the light of the issues raised during the consultation on its original proposals, further work needed to be done, before a final decision should be made concerning the future arrangements.
- 3.2 A number of considerations were taken into account both by the Working Group and by the Committee. First, it was clear from the consultation that a majority of parents and residents were not convinced by the arguments in favour of the proposed changes, and there were many requests for further work to be done on the practical implications of these changes for other parts of the city. Second, a number of other possible variations on the application of distance criteria were suggested, and time would be needed to consider these properly. Third, it is not clear at the present time what will be the local impact of the changes to admissions arrangements being proposed in the Schools White Paper, and of the possible establishment of an Academy at Falmer.
- 3.3 In view of these considerations, the Committee agreed with the Working Group that further modeling work and debate (including public debate) was needed before a final decision could be made on a solution to the current admissions problem. It is important to note that neither the committee nor the working group have rejected the 'nodal' proposal put forward in the consultation. This proposal, or a variant of it, may well prove to be the best solution, but further work is needed on it, and on other possible models, in order to have confidence that this would indeed be the case.
- 3.4 The Committee fully understood the frustration of residents in the areas most at risk of being disadvantaged by the current system. Indeed this was made plain to them by the residents themselves at the meeting. They were also aware of the opposition to change which has been expressed by residents in other parts of the city, for whom the current system works well. They were aware of a degree of confusion in the minds of a number of respondents to the consultation about the likely impact of the proposal for an 'equal

preference' system. They reaffirmed their intention to achieve a system which was fair to residents in every part of the city, and not simply a system to which the majority subscribed. They recognised their responsibility to make decisions in the interests of fairness, even when the majority of the population do not share their view. It is important to realise, therefore, that in making their decision not to change the system for 2007, they were not simply responding to the outcome of the consultation as if it were a plebiscite. Their intention is still to change the system in the interests of fairness, but they took the view that more time was needed to get it right. To that end they have asked the working group to re-convene under the leadership of the Assistant Director, Schools, and to model a number of alternatives, lead a public debate and report back later this year with recommendations about how the system can be changed for the future. If viable recommendations are agreed through this process, changes to the system could then be introduced for the 2008 admissions round.

#### **4. The issue**

- 4.1 The issue at the heart is that the secondary schools in the city are unevenly distributed, and not all are equally popular. The fact that some are oversubscribed means that a proportion of parents are bound not to be allocated a place at their first preference school. The percentage of first preferences achieved is in direct relationship to the extent of this over-subscription. Historically, around 90% of first preferences have been achieved. This proportion will only improve when the popularity of schools evens out. At present, two schools, Dorothy Stringer and Blatchington Mill, are becoming increasingly popular year on year, and this means that an increasing number of parents will not achieve their first preference. Analysis of the returns for 2006 shows that that proportion will drop to around 85% in the current year. **This figure would be the same no matter which system of place allocation were used.**
- 4.2 It is recognised that any system of place allocation requires the use of clear criteria to decide on the allocation of places to schools which are over-subscribed. Most systems use some form of geographical criterion (or criteria) to do this, once other factors (such as sibling links) have been taken into account. According to the Admissions Code of Practice, such a system needs to be transparent, objective and fair. It also needs to command public confidence.

- 4.3 The system adopted for the 2005 admissions round, using a computer-measured safe walking route criterion, met the test in terms of transparency and objectivity. The fact that the secondary schools are unevenly distributed means that it is extremely difficult to provide a system that is fair to all parents across the City. The current review of admissions was set up with the express intention of addressing this issue of fairness.
- 4.4 **Changing the system will not in itself increase the proportion of first preferences achieved.** It will simply create a different group of disappointed parents. This was pointed out repeatedly during the consultation, often accompanied by exhortations to the local authority to do something about the relative popularity of the different schools by improving educational standards at the less popular ones. However, it is well known that schools' popularity are largely a function of the perceptions of the local population about the nature of their intake, and changing a school's image therefore needs to take into account both educational and socio-economic factors. Ultimately, if a system is to succeed, every school needs to be seen by the local population as successful, so that the vast majority of parents would be prepared to accept a place for their child at any school.
- 4.5 In the real world, however, it is necessary to create an equitable way of allocating places, given that some schools will continue for some time to be more popular than others. A system which produces, either by accident or design, a student intake which is comprehensive in terms of its academic ability and its socio-economic profile, will provide the best conditions for social cohesion and success for every child. (It is this aspiration which is at the heart of the recent Schools White Paper, although there is considerable debate about whether the means proposed in the White Paper will actually achieve it.)
- 4.6 The Working Group's proposal for a nodal measurement system would, in effect, shift the catchment areas for the two most popular schools to accommodate the areas of the city which are currently too far away from their nearest school to gain places there under the current system, given these schools' current level of oversubscription.
- 4.7 The consultation threw up a number of issues, including whether the solution proposed would work, or whether it would still leave gaps in the geographical allocation arrangement, whether there were

variations of it which would work better, and whether an alternative way of allocating places, using fixed catchment areas, would be better.

- 4.8 The working group considered the responses to the consultation, and the additional suggestions made, and concluded that further work needed to be done to model the various possibilities before a final decision was made. In doing this they recognised fully that the current unevenness in access to schools from different areas of the city would persist for one more year. However, they were of the view that it would be better to carry out this further modelling in order to get the system right for 2008, than to adopt the proposals as they stood for 2007, and stand a greater risk of getting it wrong.

## **5. The request for call-in**

- 5.1 The overview and scrutiny procedure rules state the following in relation to call-in (see Appendix 4 for the call-in rules in full):

*Call-in is a process by which Overview and Scrutiny Committees can recommend that a decision made but not yet implemented be reconsidered by the body which made the decision... Call-in does not provide for the Overview and Scrutiny Committee ... to substitute its own decision, but merely to refer the matter back to the decision-maker. A decision maker can only be asked to reconsider any particular decision once.*

- 5.2 The initial request for call-in was received from Councillors Pennington and Edmond-Smith on Wednesday 25 January, and is attached at Appendix 3.
- 5.3 The request argues that the decision made by the CFS committee contravenes article 11.02 (a) of the constitution, which states that actions must be proportionate to the desired outcome (see Appendix 5 for the full text of Article 11.2). The request argues that the outcome is not shared by a significant proportion of those affected, and disproportionately affects a section of the population.
- 5.4 The call-in request also argues that the decision contravenes article 11.02 (e), which states that actions should demonstrate clarity of aims and desired outcomes. The request argues that the processes, and in particular the consultation, which led to the decision, are open to dispute as to methodology and therefore objectivity.

5.5 The request asks EOSP to consider the decision made against these constitutional criteria, and call-in the decision with a view to it being reconsidered by the CFS Committee.

6.0 **Should the decision be referred back?**

6.1 Considering these two criteria in turn:

*11.02(a) proportionality (i.e. the action must be proportionate to the desired outcome)*

The action taken by the Committee was to defer making a decision on a future system until further modeling has been carried out. In terms of the intention to improve the system for the future, this action was clearly proportionate to the desired outcome. Any decision to change the system would have an impact across the city, not just in those areas seeking to gain access to the more popular schools. It was for this reason that the consultation was carried out across the city. From the consultation responses it is clear that, had a decision been made to change the system in line with the original proposals, a significant number of people affected by it would not have been happy with the outcome. It is true that not making a change at this stage will do nothing to alleviate the situation for the areas disadvantaged by the current system. However, the intention remains to make such a change, once further modeling of its impact across the city has been carried out, and further debate has taken place, including with the other areas of the city which would inevitably be impacted by such a change. To that extent, the CFS committee decided to continue to do this work with a view to making a change in the future, and would therefore argue that their decision was precisely proportionate to the desired outcome.

### *11.02(e) clarity of aims and desired outcomes*

The aims of the review were set out very clearly at the outset, and they remain the overall aims. The committee recognized that the outcomes desired will not be achieved immediately, but on the balance of the evidence presented to them, felt that it was important to take more time to do the necessary technical work, and to allow further debate, in order to achieve a system which will deliver the desired outcomes, hopefully by 2008.

6.2 In deciding whether to refer the decision back to the CFS Committee for reconsideration, the panel should also take into account the three further criteria set out in para 13.7 of the procedure rules:

- *any further information which may have become available since the decision was made*
- *the implications of any delay; and*
- *whether reconsideration is likely to result in a different decision.*

6.3 In answer to these points, no further information has become available since the committee made its decision, and there would be no implications of a delay in making the decision, since the decision itself was to delay any change to 2008 pending further work. As to the final question, it is difficult to see how the committee could come to a different decision from the one it has already made, since a decision to change the system for 2007 would be to fly in the face of the post-consultation advice of the working group.

6.4 It is also necessary to bear in mind that, if the CFS Committee were to be invited to change its decisions, the council would face a considerable time pressure to finalise its admission arrangements by the statutory deadline (15th April 2006) with appropriate school and governor consultation on the changes.

## **7.0 Conclusion**

7.1 In the light of these points, the panel will want to debate the issue thoroughly, and come to its own view about whether it should ask the CFS committee to reconsider its decision.

## **8.0 Consultation**

8.1 This paper has been prepared in consultation with the Council's legal team.

**COMMITTEE REPORT      APPENDIX 1**

<b>Meeting/Date</b>	EOSP / Tuesday 7 February 2006
<b>Report of</b>	The Director of Strategy & Governance and the Director of Children, Families & Schools
<b>Subject</b>	School Admissions Review - Call-in
<b>Wards affected</b>	All

**Financial implications**

There are no direct financial implications in respect of this call in report. Financial issues in connection with any final decision on the School Admissions Review will be for the CFS Committee.

*Finance Officer consulted: Catherine Vaughan 01/02/06*

**Legal implications**

The call in procedures are set out at Appendix 4 and relevant part of the Council's constitution (Article 11.2) referred to in the report is set out at Appendix 5. In drafting his report to CFS Committee and his contribution to this report, the Director of Children Families & Schools has consulted the relevant legal advisers on education issues.

*Lawyer consulted: John Heys 31/01/06.*

**Corporate/Citywide implications**

The final decision on the School Admissions Review will have city wide implications in relation to children's education.

**Risk assessment**

No risk assessment has been carried out in connection with this call in report.

**Sustainability implications**

There are no direct environmental implications in connection with this call in report.

**Equalities implications**

There are no direct equalities implications in connection with this call in report.

**Implications for the prevention of crime and disorder**

There are none.

**Background papers**

The only unpublished paper relied on to a material extent in connection with this report is the request for call in which is reproduced at Appendix 2.

**Contact Officers**

*For Children Families & Schools - David Hawker, Director Tel: 29 – 3434  
For Strategy & Governance - Chris Ouellette, Scrutiny Support Officer Tel: 29-1084*

**Draft of resolutions passed by the Children, Families & Schools Committee, 23 July 2006, in relation to Item 65, School Admissions Review**

- (1) That the outcome of the recent consultation overseen by the cross-party Working Group be noted.
- (2) That the recommendation from the Working Group that the sibling link criterion be retained be agreed.
- (3) That it be agreed that, in light of the findings, to carry out further work and modelling of the implications of the recently published Schools White Paper and of alternative models for possible implementation in 2008.
- (4) That it be agreed for the Working Group to take this matter forward, and to be chaired in future by the Assistant Director, Schools. To review the structure of the Parent Stakeholder group, with a view to ensuring full and appropriate membership from across the City, and for the group to continue to meet throughout 2006/07, in order to help inform and comment on the working group's proposals.
- (5) That it be agreed to consider possible amendments to the Secondary Admissions application form for 2006/07 to include questions related to parents/carers choice of Secondary School, so that the responses to these questions can be used to inform the working group of parental/carers views.
- (6) That the working group be asked to formulate proposals regarding a future City Secondary Admissions process for agreement by Children Families & Schools Committee by January 2007, derived from their considerations and the further deliberations of the Parent Stakeholder Group.
- (7) That it be agreed to continue with the present system for 2007.

**The request for call-in**

From Roy Pennington

25/01/2006 23:03

To: Alan McCarthy/EH/BSQ/BHC@BHC

cc: Mark Wall/PR/KH/BHC@BHC, Joyce Edmond-Smith/CLLR/NAB/BHC@BHC

Subject: call - in rules 11 and 13

Dear Alan

Further to our recent request, please accept these minor clarifications.

As members of the Overview and Scrutiny Committee and of the Education and Overview and Scrutiny Panel, we formally request a call in and scrutiny of the decision at the Children Families and Schools Committee made on 23/1/06 Item 65 "School Admissions Review".

We are making this request under article 11 of the Constitution and under Procedure Rules 11 and 13 of the Overview and Scrutiny Procedure Rules.

We believe that, under article 11.02 (a) the action was not proportionate to the desired outcome. The outcome is not shared by a significant proportion of those affected, and disproportionately affects a section of the population.

We also question whether the decision demonstrates clarity of aims and desired outcomes. This principle is not met because the processes, and in particular, the consultation, which led to the decision, is open to dispute as to methodology and therefore objectivity.

Further, under PR 11.4 and 13.7, the importance of the decision made by CFS requires that it be call-in (PR 13) before implementation and/or subject to scrutiny (PR 11).

\*Support from 6 councillors, under PR 13.5, will also be forthcoming.

Cllr Roy Pennington Cllr Joyce Edmond-Smith

*\* Note – not part of the message, as a member of EOSP has requested call in, the requirements of paragraph 13.5 are satisfied and it is not necessary for 6 members to make the request.*

**Extract from Overview and Scrutiny Procedure Rules – Call in procedure**

**13. Call-in**

- 13.1 Call-in is a process by which Overview and Scrutiny Committees can recommend that a decision made but not yet implemented be reconsidered by the body which made the decision, or recommend that the full Council consider whether that body should reconsider the decision. Call-in does not provide for the Overview and Scrutiny Committee or the full Council to substitute its own decision, but merely to refer the matter back to the decision-maker. A decision maker can only be asked to reconsider any particular decision once.
- 13.2 Call-in should only be used in exceptional circumstances - for example where Members have evidence that a decision was not taken in accordance with Article 11 of the constitution ('Decision making'). Day to day management and operational decisions taken by officers may not be called-in.
- 13.3 Any decision made by an Executive Committee or Sub-Committee shall be published by means of a notice at the main offices of the Council and where possible by electronic means, normally within 2 working days of being made. All Members of the OSOC (and for decisions in respect of education matters, the Education Overview and Scrutiny Panel) will be sent, if possible by electronic means, copies of all such decision notices at the time of publication.
- 13.4 Any decision made by an Executive Committee or Sub-Committee may be called in up to five working days from the date of the meeting at which the decision was taken.
- 13.5 During this period, any Member of the OSOC (or in respect of education matters any Member of the Education Overview and Scrutiny Panel) or any 6 Members of the Council may request that a decision be called-in for Scrutiny by the OSOC or Education Overview and Scrutiny Panel as appropriate. Such a request shall be made in writing to the Chief Executive and shall include the reason(s) for the request and any alternative decision proposed. The Chief Executive may refuse to accept a request which in his/her opinion is frivolous, vexatious or defamatory, or where no reason is given.

- 13.6 If the Chief Executive accepts the request he/she shall call-in the decision. This shall have the effect of suspending the decision coming in force and the Chief Executive shall inform the relevant Executive Committee Chair(s) and the relevant Chief Officer(s) of the call-in. The Chief Executive shall then call a meeting of the OSOC, its Urgency Sub-Committee or the Education Overview and Scrutiny Panel as appropriate to scrutinise the decision, where possible after consultation with the relevant Chair and in any case within 7 working days of accepting the call-in request, unless a meeting of the appropriate Committee/Panel is already scheduled to take place within this period.
- 13.7 In deciding whether or not to refer a decision back, the relevant Overview and Scrutiny Committee shall have regard to the criteria for Scrutiny reviews set out at paragraph 11.4 of these rules. In addition it may take into account:
- any further information which may have become available since the decision was made
  - the implications of any delay; and
  - whether reconsideration is likely to result in a different decision.
- 13.8 If, having scrutinised the decision, the relevant Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making body for reconsideration, setting out in writing the nature of its concerns or, only if it considers the decision is contrary to the policy framework or budget agreed by the Council, refer the matter to the full Council to determine whether or not it should be referred back to the decision making body.
- 13.9 If the relevant Overview and Scrutiny Committee does not meet within 7 working days of the Chief Executive accepting a call-in request, or does meet but does not refer the matter back to the decision making body or to the Council, the decision shall take effect on the date of the Overview and Scrutiny meeting, or the expiry of the period of 7 working days from the call-in request being accepted, whichever is the earlier.
- 13.10 If the decision is referred back to the decision making body, that body shall then reconsider, either at its next programmed meeting or at a special meeting called for the purpose, whether to amend the decision or not before reaching a final decision and implementing it.

- 13.11 If the relevant Overview and Scrutiny Committee refers the matter to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, the Council will refer any decision to which it objects back to the decision making body, together with the Council's views on the decision. In this case the decision making body shall consider, either at its next programmed meeting or at a special meeting convened for the purpose, whether to amend the decision or not before reaching a final decision and implementing it.
- 13.12 If the Council does not meet within two weeks of the matter being referred to it, or if it does meet but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of that two week period, whichever is the earlier.

**Extract from Article 11 of the Council's Constitution on Decision making**

**11.02 Principles of decision making**

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) respect for human rights (the authority will give particular consideration to the implications for human rights of any proposals at an early stage in the decision making process);
- (d) a presumption in favour of openness;
- (e) clarity of aims and desired outcomes.