

## Responses to the Ombudsman's Settlement Proposals

The responses have been provided in accordance with the issues raised by the Ombudsman in his letter to the Council that summarised his key concerns and form the basis of the settlement proposal.

### **1) *An apology***

There have been five separate apologies to the complainants. These include an apology to the complainants from the Chief Executive, dated 3 November 2008 and one from the Portfolio Holder for Children's Services in a letter dated 24 November 2008 to the stakeholders of the West Lodge Schools. This is in addition to the earlier apologies from the relevant Directors.

A further apology was issued through a press release dated 3 August 2009. A further letter will be sent to the three complainants from the Chief Executive following the letter from the Ombudsman.

### **2) *Confirmation that the original amalgamation policy was changed as a result of the complaints***

The amalgamation policy was changed in October 2007 to support the Council's strategic approach to school organisation. In October 2008, Cabinet agreed a clarified policy and implementation guidance as a result of the complaints, and this demonstrates that the Council has recognised and acted upon the concerns put forward.

The Cabinet agreed a revised Amalgamation Policy and Implementation Guidance in October 2008. A review of the Amalgamation Policy documentation was undertaken using experience gained through the implementation of the policy (six schools had amalgamated in Harrow before West Lodge Schools, four using the 2005 policy), new legislation in the Education and Inspections Act 2006, feedback from the Department for Children, Schools and Families (DCSF) and the West Lodge Stage 2 complaint investigation recommendations. Headteachers and Chairs of Governors were consulted on the draft. Copies were sent to the Stage 2 complainants. Cabinet agreed the final draft at their meeting on 23 October 2008.

The revised Policy and Implementation Guidance clarifies the decision-making process, provides Guidance Notes on key topics of the Statutory Process, Leadership and Governance, and exemplar template documents. The Guidance Notes include legislative frameworks as both Education and Employment law apply to the policy.

The Policy proposes the local authority's preferred model for implementation, although it acknowledges that as a strategic policy there will need to be flexibility for school specific circumstances. The local authority is also mindful of the learning gained through policy implementation as well as changes to legislation and proposes that amended or additional guidance will be published accordingly. Examples of this learning are the move towards encouraging governing bodies to federate prior to amalgamation and adopting an executive headteacher model of leadership.

### **3) *The Ombudsman suggests that there is a review of the amalgamation policy to check that it addresses the legitimate concerns of parents who have children in the school that closes and is then governed and managed by the governing body and headteacher of the school remaining open.***

The response to the Ombudsman is provided at two levels; West Lodge Schools, and strategic level. The position with the West Lodge Schools has now been superseded by the implementation of the amalgamation and the work of the Governing Body.

#### West Lodge School level

- The governing body for the West Lodge combined school was reconstituted by the end of the Summer Term. This included elections, and any parents were able to stand for election, including the complainants.
- The interim governing body was representative of the whole West Lodge schools' community: Associate Governors from the middle school staff were appointed, former middle school governors were invited to join governor working groups, and parent governors with children in both, what were, the First and Middle schools. Given the very short period following the High Court judgement and the date for implementation, officers considered that the response of the Governing Body was very positive.

#### Strategic level

At the strategic level, the revised content in the Amalgamation Policy and Implementation Guidance outlines the local authority's preferred approach to close one school and extend the age range of the other school. One implication of adopting this approach is that the governing body of the remaining school has the legal authority to determine key issues. These include the governance (governing body) and the leadership (headteacher) arrangements. These powers are provided to the governing body through Education and Employment legislation. The local authority is not able to direct or intervene. The local authority's role is to support governing bodies and encourage them to have regard to the policy and associated guidance.

The local authority notes the Ombudsman's concerns of those parents potentially unrepresented in the combined school's governing body. Concern about parental representation has not been a significant issue in any other amalgamation. We have reviewed the current guidance and highlight where this is addressed in the policy documentation.

- a. In the Timeline Section in Stage One – Preparation there is specific reference to discussion on the statutory route and confirming the headteacher and governance arrangements of a combined school. The Additional Note makes reference to including this information in the consultation documents.
- b. Guidance Note 3 focuses on Governance arrangements and outlines a process. It also proposes that both governing bodies consider the draft instrument of governance.
- c. The consultation is a significant part of the amalgamation process. All stakeholders are invited to comment on the proposals including the arrangements for governance and leadership. All stakeholder representations including parental representations are reported to Cabinet when making decisions about amalgamations.

Guidance Note 3 on Governance, recognises that in line with legislation the power to ensure this approach is adopted remains with the governing body of the school with the extended age range, and recommends that there is a process to ensure that the governing body of the amalgamated school is appropriate for the size and age range of the school. The guidance states that the governing body should be representative of all stakeholders in the combined

school, and that the process should be efficient, timely, transparent and fair. The constitution and membership of governing bodies is directed by regulation, and includes parental representation. The guidance note recommends that a representative working group with membership from both schools is established by the governing bodies to lead on detailed implementation work. One of the tasks for this group is to draft an instrument of governance for the all through primary school. A timeline to make appointments and to re-constitute the governing body should be drafted. Key actions are listed in the Implementation Plan template.

The Amalgamation Policy 2008 does cover the issues of governance and leadership more thoroughly than the original 2005 policy or changed 2007 policy. The Council strives for continuous improvement and acknowledges that there is always the potential to improve practice and refine guidance.

**4) *To confirm that mediation will be offered where there is a breakdown in the relationship between governing bodies and the Council***

The local authority has finalised a disputes resolution process for disputes between the local authority and governing bodies. The procedure allows for either party to request mediation in the event of a dispute and reflects standard partnership dispute resolution arrangements. Chairs of Governing bodies were consulted on the draft process. The final version incorporated their comments.

The local authority has offered mediation to the complainants, but this has not been taken up. Our only interest is in helping the opposing parties within the school accept what has happened and move forward together working in harmony and towards united goals in the best interests of the children of West Lodge.

The Council's view is that successful mediation will require all sides, the local authority, the former middle school governors and the former first school governors and parents to be open about their contributions to the challenging situation that developed. We believe that all parties, local authority and complainants alike, have a responsibility to contribute positively to the combined school.

**5) *Review and comment on how the amalgamation policy has worked for other amalgamations***

There is an increasing knowledge base of amalgamation in Harrow. 14 schools have amalgamated or are in the process of forming combined schools. This includes four schools that amalgamated successfully applying the 2005 policy. Four of these schools will amalgamate with effect from 1 September 2009, two of which initially did not agree about amalgamation. The trigger for all schools has been the resignation of a headteacher. Cabinet will be considering statutory proposals that could effect an amalgamation of two schools at their meeting in September 2009.

The context for all schools is different as are the challenges and solutions. However, none of the other amalgamations have generated parental complaints, parental representations, or the scrutiny of the local authority's policy. The amalgamations have been completed within expedient timeframes minimising the period of uncertainty for all the school stakeholders.

The Amalgamation Policy and Implementation Guidance has been subject to the most extensive scrutiny. It has been informed by advice from the DCSF, experience, consultation, as well as officer experience and Stage 2 and 3 Complaint Reports. The Council is satisfied that it is lawful. The Office of the Schools' Adjudicator approved the Council's proposed

amalgamation of the West Lodge schools, achieved by closing one school and extending the age range of the other school. In turn his decision was scrutinised by the High Court and upheld.

**6) *The Council's reasons for not implementing all the recommendations of the Review Panel Stage 3 Report***

The Council has addressed every upheld complaint and recommendation from the complaint in an action plan which was provided to complainants at the end of Stage 2 (This is provided in Annexe B and has been updated to incorporate Stage 3). The only two findings or recommendations of the approximate 80 complaint point findings and recommendations (50 of 52 findings) over the entire complaints procedure which were not accepted by the Council have been addressed by the Chief Executive's response to the Stage 3 Investigation report. The complaints are around proportionality and bias. The summary findings and the rationale for not accepting them are outlined as follows:

- i) *The Local Authority's decision to reopen the consultation exercise was disproportionate.*

The Stage 3 investigation panel partially upheld the complaint concluding that to reopen consultation might have been disproportionate if based solely on parental representations. The Chief Executive disagreed with this finding and was satisfied that the decision was reasonable and proportionate solely on the level of representations received. The level of representation was unprecedented in recent Council history in relation to a school amalgamation.

The Council received a petition signed by 301 parents urging it to proceed with amalgamation. Further the Feasibility Study, which it was understood that the Middle School Governing Body ratified, stated that 70% of stakeholders were in favour of amalgamation.

Officers became increasingly concerned that there were two opposing views within the steering group. Over a period of two weeks, significant efforts were made by officers to find a way forward including an offer by the Director of Schools to arrange mediation.

Against this background, the Chief Executive considered that it was entirely proportionate for the Council to initiate a formal consultation on the issue of amalgamation. The Council was not publishing a statutory proposal but merely seeking to fully ascertain the views of all stakeholders.

- ii) *The Council is demonstrating bias by looking to close the Middle School rather than either one of the schools.*

The Chief Executive respected the panel's view, but was satisfied that no officer intended to give an impression of bias, or was motivated by a desire to prejudice the Middle School. The Council's practice has been to seek to discontinue the school where the Head Teacher has resigned and the vacancy occurs; which provides a consistent and objective approach. Statutory Proposals have been published in respect of four schools proposing to close the school where the Head Teacher vacancy arose first. The new Council policy that was approved by Cabinet on 23 October 2008 has formalised this practice and states, "the local authority will usually discontinue the school where the headteacher has resigned and the vacancy occurs". The Council's practice for the West Lodge Schools was consistent with this approach.

**7) A report to Members to record the Ombudsman's view on the complaint**

A copy of the report to Cabinet and the minutes from the Cabinet meeting will be sent to the Ombudsman and to the complainants in accordance with the settlement proposal recommendations.

**8) A Payment in recognition of the time and inconvenient caused in making the complaint**

A payment for £250 for each complainant who approached the Ombudsman will be made in accordance with the Ombudsman's proposals.