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To: County Council – 17 May 2012

Subject: Local Government Ombudsman's Report

Classification: Unrestricted

Summary: In order to comply with Section 31(1)(a) of the Local Government Act 1974, Members of the Council are required to consider the Ombudsman's report and recommendations, and within three months of receiving the report (or longer, by the Ombudsman's written agreement) to notify the Ombudsman of the action they have taken or propose to take.

The attached report relates to eight cases of maladministration of the school admission appeals process for Tunbridge Wells Girls' Grammar School (administered by the Council on behalf of the school's governors) during 2010. One case, no. 09 010 311, turned on the outcome of maladministration of testing at a school acting as a test centre for out-county candidates, for which the only remedy offered by the Council had been the school admission appeal process. The report highlights a concern that the Council offers no mechanism to "retest" children who have taken the Kent Test, which is to the disadvantage of any candidate applying to a grammar school which ranks children for admission by aggregate test score.

Recommendations:

Members are asked to consider the recommendations set out in the Ombudsman's report (**Appendix 1**), and the response to the Ombudsman's report prepared by officers in September 2011 (**Appendix 2**), and to agree what actions they require officers to take on their behalf.

Members are asked to decide:

- (1) Whether the Council should commission and fund a further test to provide, as recommended by the Ombudsman "a means to enable, in appropriate circumstances, candidates to be retested." Such a test would then be an available element in future when serious incidents or errors affecting testing were investigated.
- (2) Whether officers should be required to put any further training of the type recommended into place for test invigilators, and to report on this to the Council.
- (3) Whether officers should be required to report on how the Council can ensure that any clerking service it provides is effective and complies with the law and statutory guidance.
- (4) Whether to instruct the Council's Democratic Services Unit to stop sending

appeal panel decision letters with the Clerks' facsimile signatures and ensure that any letter prepared on behalf of a panel is the one selected by the panel.

1. Introduction

(1) This report was issued by the Ombudsman at the end of June 2011, but was not placed before the Council for it to consider and respond to within three months of receiving it as required by the Local Government Act 1974 (LGA). Instead, the report was considered by the Council's Governance and Audit Committee on 14 September 2011. The three month period for consideration of the Ombudsman's report by the full Council can only be extended by the written agreement of the Ombudsman. Where the requirements of the LGA are not met the Ombudsman has the option of issuing a second critical report.

(2) The response from officers attached at Appendix 2 sets out the actions already taken, certain concerns about the recommendations, and some proposals for action to address the problems highlighted in the report. This was sent to the Ombudsman in September 2011, but did not meet the legal requirements of the LGA which requires the Council to respond to the report.

(3) The Ombudsman visited Kent on 11 May to discuss a number of matters with officers, including the outstanding recommendations, before deciding whether or not to issue a further report.

(4) In the interim, a review of all elements of the County Council's 11+ assessment process, including the tests, has begun, which may have some impact on the delivery of any solution. It may be appropriate to take the opportunity to consult with members of the teacher-led review group on the processes which are currently in place to address errors in testing, and to seek consensus on the desirability of retesting. The commissioning and standardisation of tests takes several months, so if the Council decides that additional tests must be made available, action will need to be taken promptly.

2. Financial Implications

2.1 Testing

(1) As reported to the Ombudsman in the course of her enquiries, one reason that a "retest" was not offered in the case of complainant Mrs K was that there were available no comparable, secure tests standardised in the same way as Kent's tests. In order to hold a set of tests in reserve for a situation where children applying for a "superselective" grammar school had been placed at a significant disadvantage by a grave administrative error, the Council would need to commission and standardise a further set of tests in advance. It is estimated that this would cost in the region of £65k.

(2) The cost could represent a single additional spend, but it would be repeated in any years when the "backup" tests were needed (and so required replacement), or if the format or content of the main tests changed, requiring the same changes to be reproduced in the backup tests.

2.2 Invigilator Training

(1) If it is deemed that the steps taken to date are insufficient, there would be costs attached to buying in or developing a training package of the type proposed for invigilators. Because of the number of candidates tested, several sessions would be required, to reach as many invigilators as possible. It is unlikely that the training would reach all invigilators, and it would need to be repeated at intervals to address staff turnover.

(2) It is estimated that this would cost £5k annually.

2.3 Clerking and the Use of Facsimile Signatures

(1) The response of the Council's officers is set out in the letter attached as Appendix 2. References to paragraphs in the School Admission Appeals Code are to the Code in force when the report was made, rather than the new Code, which came into force in February 2012. The new Code is shorter and simplified, but still recognises that an appeal administrator may make the necessary administrative arrangements for the appeal on behalf of the Clerk (para 1.11), requires the Clerk to send out the papers (para 2.10) and requires the Clerk or Chair to sign and send the decision letters (para 2.24).

(2) The response explains the way in which the Council's Democratic Services team organises the large number of appeals it administers, which makes the production and personal signature of glossary letters by clerks themselves impractical.

(3) Action has now been taken to help clerks distinguish between glossary letters, and the response proposes a means to enable the Clerk to identify and "sign off" a letter to be sent by the Council.

(4) If all letters must be signed in person, there is likely to be an increase in the costs associated with employing clerks (time and travel). Officers discussed this aspect of the report with the Ombudsman at the meeting on 11 May. In particular, her attention was drawn to advice given by the Ombudsman's Office in April 2011 to East Sussex County Council that scanned signatures on letters in the name of the clerk are acceptable.

(5) The Council is also asked to note that, in relation to the Ombudsman's comments about the actual appeal hearing, the Clerk has resigned and two of the Panel members have been dismissed from hearing appeals.

3. The Report

The Ombudsman's full and complete report is attached for consideration, together with the response sent by officers in September 2011.

4. Conclusions

(1) It is recognised that, in all the cases raised in the report, individuals acting on behalf of Kent County Council (the invigilator of the tests, the Clerk and appeal panel

and the team sending out decision letters) made errors which amounted to maladministration to a greater or lesser degree.

(2) In all cases, it is agreed that any injustice arising from that maladministration has been remedied, but the recommendations are made with the intention of preventing – insofar as it is possible – a recurrence of the same errors.

(3) If County Council Members are satisfied that any or all of the Ombudsman's recommendations are appropriate, it is suggested that they agree that those recommendations be pursued, and advise the Ombudsman of the actions they propose to take, asking officers to report back to a future meeting on how these have been taken forward.

(4) If in any case they wish to propose action other than that recommended by the Ombudsman, their proposal and the reasons for it should be recorded so that these, too, can be formally returned to the Ombudsman as required for her consideration.

5. Recommendations

The County Council is invited to agree/endorse the recommendations as printed on page 1 of this report.

6. Background Documents:

Appendix 1 – Local Government Ombudsman's Report

Appendix 2 – Comments on the report from the Council's officers, sent to the Ombudsman in September 2011

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