

**Open Report on behalf of Debbie Barnes, Assistant Director Children's Services**

Report to:	<b>Executive Councillor Children's Services</b>
Date:	<b>25 July 2011</b>
Subject:	<b>Sixth form education provision for pupils enrolled at Stamford Queen Eleanor School</b>
Decision Reference:	<b>01896</b>
Key decision?	<b>No</b>

**Summary:**

This paper requests that the existing pilot project that started in September 2010, for 7 pupil places at Stamford Endowed School for sixth form education, is extended for 12 months to 31st August 2013.

Stamford Queen Eleanor School is the only secondary maintained school in Stamford town and it does not offer sixth form provision. This results in many parents and students seeking their entire secondary education elsewhere. In order to improve the take up of education at Queen Eleanor School and improve its profile within the community, an extension to the pilot project that started in 2010 is requested to allow a second cohort of pupils to complete their sixth form education. The pilot offers pupils at Queen Eleanor School the opportunity to attend the locally situated, independent Stamford Endowed School for their sixth form education. The cost of this pilot is £4,800 a pupil per annum over two years. The second cohort consists of no more than 10 pupils.

**Recommendation(s):**

That the Executive Councillor approves the extension of the existing pilot project agreement with Stamford Endowed School for sixth form education for 12 months until 31st August 2013 to allow a second cohort of 10 pupils to complete their sixth form education in full.

**Alternatives Considered:**

1. Not to extend the pilot project. This is not recommended as it would mean the education provided to a second cohort of pupils would be inconsistent with them needing to change schools halfway through the sixth form.

**Reasons for Recommendation:**

The recommendation made will allow a second cohort of pupils to take part in

the pilot project for their full sixth form education further cementing the pilot's aim of improving standards and the profile of Queen Eleanor School in the community resulting in local young people choosing to receive their secondary education locally. This recommendation is in line with the Council's duty and powers under s15ZA, s18 and S517 of the Education Act 1996.

## **1. Background**

In August 2010, the Director of Children's Services in consultation with the Executive Councillor for Children's Services approved the decision to establish a pilot project for 2 years starting in September 2010. The pilot was to provide sixth form education at Stamford Endowed School to pupils that had been on roll at Stamford Queen Eleanor School. The first cohort in 2010 consisted of 7 pupils at a cost of £4,800 per pupil per year for 2 years.

The proposed extension would allow this two year pilot project to be fully concluded with a second cohort of pupils able to complete two full years of sixth form education at Stamford Endowed School. The total cost of this extension would be no more than £96,000 for 10 pupils based on the average level of funding for pupils in Lincolnshire as at April 2011, which equates to £4,800 per pupil per academic year.

In the pilot, Stamford Endowed School offer each pupil a minimum of three AS or A Level subjects to study during the first academic year and a minimum of three A Level subjects to study during the second academic year. Pupils are expected to reach a 'pass' grade for each subject studied. Stamford Endowed School provide appropriate reports on predicted grades based on the A Level Information Service database.

LA purchase of places within private sector education:

Under Section 18 of the Education Act 1996, the Council has the power to purchase education places in the independent sector. However, as with all Council decision making the use of power must be rational, taking into account all relevant considerations and not taking into account irrelevant considerations. In this particular case the reason underlying the recommendation is that the pilot will enable partnership working with the intention to raise standards at Queen Eleanor School and improve community perceptions so that the School can become truly comprehensive.

The duty to provide education is within section 15ZA of the 1996 Education Act and the Council is fulfilling its s15ZA duty to secure suitable secondary education provision.

The Council must comply with its obligations under the Human Rights Act. In particular, the provision of independent sector education in Stamford funded by the Council should not discriminate, under Article 14 of the European Convention on Human Rights, against pupils in other parts of Lincolnshire if a similar issue arose in those areas and no similar provision was made. In such an instance, Lincolnshire County Council would review its position and seek an innovative

solution to meet local need. As this is a pilot we will be clear about evaluation and will carefully consider the impact it has on a local and countywide basis.

The Council's obligations under the Equality Act 2010 need to be taken into account by the Executive Councillor when coming to a decision. This section draws attention to the following considerations:

The Council must, in the exercise of its functions, have due regard to the need to:

(1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 s 149(1). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: s 149(7).

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

(1) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(2) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(3) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others.

It is important that the Executive Councillor is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive Councillor.

The proposed recommendation is consistent with the Equality Duty set out above and in particular the eligibility criterion for pupils to take part in the pilot at Stamford Endowed School does not discriminate against pupils based on any protected characteristics. Stamford Endowed School will be contractually bound

in its treatment of Service Users to have regard to and abide by the principles of the Human Rights Act 1998 and the European Convention on Human Rights. They will also be required to have a written policy of equality of opportunity to indicate a commitment to the elimination of unlawful discrimination and to ensure equality of access to services and employment. This policy is required to be in line with the County Council's Equal Opportunities Policy.

The use of public funds for this pilot:

Under Section 517 of the Education Act 1996, where the Council exercises its powers under s18 based on a lack of existing suitable provision, the Council must pay the full fees for places. This does not mean that the Council cannot achieve a discount on the independent schools usage fees if this represents the full amount of what the School is charging. It does mean that parents cannot be expected to contribute to the cost. In this case the School is charging a reduced rate in line with the cost to the authority of any sixth form education placement within a maintained school and no parental contribution will be made.

The Young People's Learning Agency would normally provide grant funding for sixth form pupils unless they are in independent schools. Based on the recommendation the Council will therefore not receive this funding and the costs instead will need to be covered locally from within existing Council budgets. From a national perspective the public purse will only be funding these pupils' once.

Contract competition:

The Council's Contract Regulations usually require some form of price competition where the anticipated cost of the service is above £5,000, however, approval for direct negotiation of contracts over £75,000 and under £250,000 can be made by the relevant portfolio holder in exceptional circumstances.

Under EU procurement rules, these services are classified as Part B services and as the value is below the latest EU threshold for the procurement of services (currently £156,442) the Public Contract Regulations which govern Local Authorities procurement do not require this service to be exposed to competition through a tender advertisement in the Official Journal of the European Union (OJEU). Contracting Authorities are still bound to comply with the fundamental rules and principles of the EU Treaty which include obligations of transparency and non-discrimination. These obligations would normally require an advertisement and tender process unless a contract would be of no interest to organisations located in other member states. Due to the specialist local requirements of this service it has been considered, in this instance that the contract will be of no interest to organisations located in other Member states. Whilst it is recognised other education providers may be interested nationally or near to Stamford this problem needs solving locally and the nearest secondary maintained provider is out of county.

## **2. Conclusion**

By agreeing to extend the pilot project for 12 months, a second cohort of pupils from Stamford Queen Eleanor School will be able to complete their entire sixth form education at Stamford Endowed School. In making this decision the Council is exercising its powers under s18 of the Education Act 1996 and is making an exception to the Council's Contract Regulations.

### **3. Legal Comments:**

The Council has the power to implement the pilot proposed in the Report on the legal basis set out in the Report. The Executive Councillor must have regard to the matters set out in the Report including the Equality Duty which cannot be delegated.

The decision is consistent with the Policy Framework and within the remit of the Executive.

### **4. Resource Comments:**

Finance: Sixth form pupils, including those in academy schools, attract grant funding from the Young People's Learning Agency. Sixth form pupils in independent schools do not attract this funding. The proposal to place pupils in an independent school will therefore cost the Council £96,000 more due to the loss of funding than if those pupils attended a Council maintained school or an academy. The Council would be likely to incur extra home to school transport costs if these pupils attended a Council maintained school or an academy. The extra costs of the proposal to the Council would therefore be less than £96,000.

However, these extra costs may be regarded as unavoidable if the Council is satisfied that provision is not available from the maintained sector within a reasonable distance.

Funding for the recommendation would be made available from within existing Council budgets.

Procurement: no comment.

### **5. Consultation**

#### **a) Has Local Member Been Consulted?**

n/a

#### **b) Has Executive Councillor Been Consulted?**

Yes

#### **c) Scrutiny Comments**

n/a

**d) Policy Proofing Actions Required**

n/a

**6. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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