

Education, Children and Families Committee

10am, Tuesday, 24 May 2016

Recent Developments in Gaelic Education Provision in Edinburgh

Item number	7.9
Report number	
Executive/routine	Executive
Wards	Not applicable

Executive summary

At its meeting of 3 March 2016 the Governance, Risk and Best Value Committee asked for a joint report from the Acting Executive Director of Resources and the Acting Executive Director of Communities and Families about recent developments in Gaelic education provision in Edinburgh. Committee requested that the report contain detail of whether due process was followed and identify lessons learnt, and that it should be submitted to the Education, Children and Families Committee in May, prior to going to the Governance, Risk and Best Value Committee in June 2016.

This relates to the capacity issue at James Gillespie's High School identified in the 'Strategic Management of School Places: P1 and S1 Intakes for August 2016' report which was submitted for consideration to the Education, Children and Families Committee Meeting on 1 March 2016 but was subsequently withdrawn. This report has been prepared on that basis and responds to the request from the Governance, Risk and Best Value Committee.

Links

Coalition pledges	Not applicable
Council outcomes	Not applicable
Single Outcome Agreement	Not applicable

Recent Developments in Gaelic Education Provision in Edinburgh

Recommendations

- 1.1 Note the content of this report.
- 1.2 Note that due process was followed in the 'Strategic Management of School Places: P1 and S1 Intakes for August 2016' report which was submitted for consideration to the Education, Children and Families Committee Meeting on 1 March 2016 but was subsequently withdrawn.
- 1.3 Note the lessons which have been learned as set out in this report and the possible actions identified which will be subject to consultation with the Head Teachers Executive and the Consultative Committee with Parents prior to decisions being taken regarding the implementation, or otherwise, of any changes for the 2016/17 School Placements process.
- 1.4 Note that, since 1 March 2016, the Acting Director of Communities and Families and Head of Operational Support have had very constructive discussions and engagement with Bòrd na Gàidhlig and representatives of the Gaelic community. A Working Group was established to consider options to address the projected capacity issues at JGHS and allow a sustainable position to be reached regarding which excellent progress has been made and a clear way forward established.
- 1.5 Refer this report to the Governance, Risk and Best Value Committee.

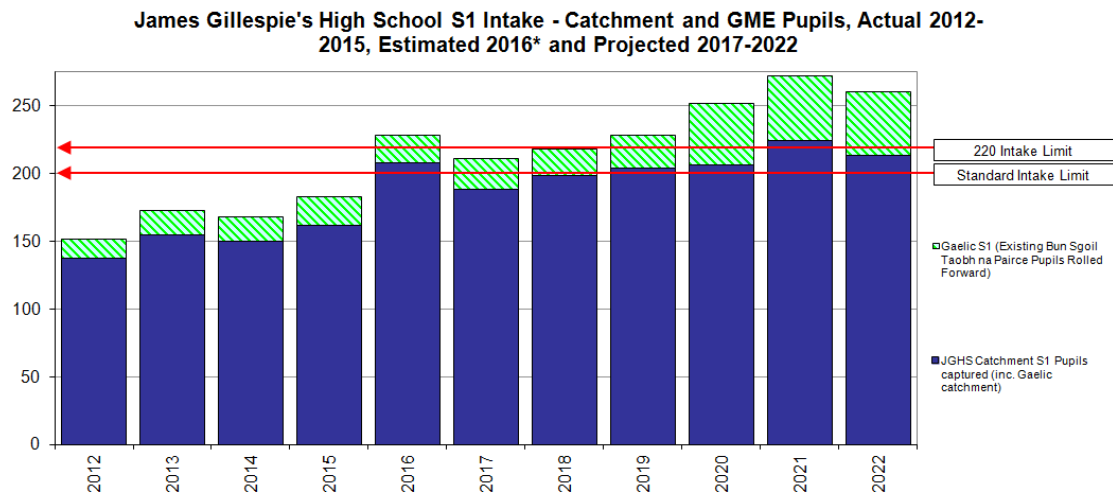
Background

- 2.1 At its meeting of 3 March 2016, the Governance, Risk and Best Value Committee asked for a joint report from the Acting Executive Director of Resources and the Acting Executive Director of Communities and Families about recent developments in Gaelic education provision in Edinburgh. Committee requested that the report contain detail of whether due process was followed and identify lessons learnt, and that it should be submitted to the Education, Children and Families Committee in May, prior to going to the Governance, Risk and Best Value Committee in June 2016.
- 2.2 The request from the Governance, Risk and Best Value Committee relates to the capacity issue at James Gillespie's High School (JGHS) identified in the 'Strategic Management of School Places: P1 and S1 Intakes for August 2016'

report (the 'SMSP 2016' report) which was submitted for consideration to the Education, Children and Families Committee Meeting on 1 March 2016 but was subsequently withdrawn. This report has been prepared on that basis and responds to the request from the Governance, Risk and Best Value Committee.

- 2.3 The 'SMSP 2016' report highlighted that, due to an exceptionally high number of catchment registrations for entry into S1 in JGHS in August 2016 including those pupils transferring from Bun-sgoil Taobh na Pàirce, it was possible that some pupils might not have been successful in gaining a place at the school. Committee was asked to note the report and that Gaelic Medium pupils unsuccessful in gaining a places at JGHS would be offered a place at Tynecastle High School or may accept a place at their mainstream catchment school.
- 2.4 Whilst the 'SMSP 2016' report was withdrawn, to provide the necessary context and background information for this report the elements within it relating to the potential capacity issue at JGHS have been extracted and are included in Appendix 1.
- 2.5 Since the 'SMSP 2016' report was withdrawn, a solution has been identified which will allow all eligible S1 registrations into JGHS for August 2016 to be accommodated. During March, as a consequence of further detailed analysis work undertaken by the school regarding timetabling, the Head Teacher of JGHS confirmed that an S1 intake of 240 could be accommodated in the school for August 2016 without any adaptations to the existing buildings being required.
- 2.6 At the time of issuing this report, the number of eligible S1 registrations to JGHS for August 2016 was 229 on the basis of which an intake limit of 240 would require to, and would, be set. This would allow all eligible S1 registrations to be accommodated and permit a number of placing requests into the school to be accepted.
- 2.7 The position regarding what S1 intakes can be sustained for JGHS on an ongoing basis, and if a level in excess of the current defined limit of 200 can be accommodated, has been reviewed. As a consequence of further detailed analysis work undertaken by the school regarding timetabling and a risk assessment and consideration of the ability to implement an appropriate fire strategy, the Head Teacher of JGHS has confirmed that an annual S1 intake of 220 could be accommodated on a permanent, sustained basis without any adaptations to the existing buildings being required.
- 2.8 However, given the continuing pressure on the school due to rising school rolls and other factors, even with an increased S1 intake limit, the current arrangements at JGHS are not sustainable and the S1 intake limit could not be increased to a level which could accommodate all future demand without there being some change required to the current arrangements.

2.9 The table below shows both the historic and latest projected catchment S1 intakes for JGHS, (taking into consideration known and projected housing developments in the area) and illustrates that based on the latest roll projections (which could obviously still change in the future) it is forecast that the standard intake limit of 200 will be breached in each year from 2016 onwards and an increased S1 limit of 220 breached in each year from 2019 onwards (with the limit being met in 2018).



*Based on available registration data as at April 2016 and therefore subject to change

2.10 A Working Group involving elected members, Council officers and key stakeholders was established to allow the Council to engage with key stakeholders to consider options to address the projected capacity issues at JGHS and allow a sustainable position to be reached.

2.11 A separate report on the agenda for this Committee provides an update regarding the matters considered by the Working Group, the conclusions reached and the proposed way forward.

2.12 Since 1 March 2016 excellent progress has been made and a clear way forward established. A solution has been found to the potential capacity issue at JGHS for August 2017. This allows time to more fully consider the best medium term solution which is likely to be a proposal to establish the Darroch facility as a permanent annexe of both James Gillespie's High School and Boroughmuir High School (BHS). This would allow the capacity issues at both JGHS and BHS to be addressed whilst retaining the provision of secondary GME at JGHS until an estimated 2021.

2.13 The future strategy for the provision of GME at early years, nursery, primary and secondary levels will be considered and will form part of the wider revised Council Gaelic Language Plan. This strategy will be co-produced between Council officers from Communities and Families and representatives of the Gaelic community through the Gaelic Implementation Steering Group and will be

taken to a future meeting of the Education, Children and Families Committee for consideration.

- 2.14 This strategy will assist in informing the future provision of GME at all levels allowing the Council to consider ways in which the already very considerable investment in, and successes arising from, the provision of GME in the City can be further enhanced. Indeed, one of the conclusions arising may be the necessity to expand the level of existing GME provision.

Main report

Due Process

- 3.1 The first question posed by the Governance, Risk and Best Value Committee is whether due process was followed. This question has been considered in two parts; firstly an assessment of compliance with Council requirements and secondly the extent to which any relevant legislative requirements were followed.
- 3.2 Turning first to the question of compliance with Council requirements, the 'SMSP 2016' report was submitted for consideration to the Education, Children and Families Committee Meeting on 1 March 2016 but was subsequently withdrawn. This was the latest in a series of annual reports which sets out accommodation and placement issues for the anticipated P1 and S1 intakes for the forthcoming school year, on this occasion for 2016/17.
- 3.3 This annual report provides an analysis of capacity and identifies any accommodation issues that may arise across the primary and secondary school estates as a result of the anticipated P1 and S1 intake numbers, in this instance for August 2016. The revised and updated 'Strategic Management of School Places: P1 and S1 Intakes for August 2016' report is a separate item on the agenda for this Committee.
- 3.4 The annual report is based on the findings of a Communities and Families Officer Working Group that meets in January each year as part of the annual P1 and S1 intake process. As has been the case in previous years, the most recent report to Committee in March 2016 identified strategies to address any issues identified to ensure that a consistent and equitable approach is taken to accommodating catchment pupil numbers and, where possible, placing requests across the school estate.
- 3.5 The annual report is produced in February each year for consideration at the Education, Children and Families Committee Meeting in March and is based on the most up to date information available at the time, however it highlights that the pupil intake numbers will change prior to the start of session in August.
- 3.6 The sequence and timing of events which was followed for the draft 'SMSP 2016' report was as follows:

- Following completion of the assessment by the Communities and Families Working Group and the identification of any issues arising, the draft 'SMSP 2016' report was produced and circulated to all Committee members on 18 February 2016 in advance of consideration at the Agenda Planning Meeting on 22 February 2016.
- The draft report was considered at the Agenda Planning Meeting on 22 February 2016 with the only action arising being a request that Appendix 3 be amended to include comparative figures for previous years, a change which was reflected in the final report.
- The report was published, together with the other papers for the Committee meeting, on 24 February 2016.
- On 25 February 2016 a letter was sent to the parents or guardians of all pupils who had registered for an S1 place at JGHS for August 2016. The purpose of this letter was to draw attention to the 'SMSP 2016' report; to highlight the possibility that an estimated nine catchment pupils may not be successful in gaining a place at JGHS in August 2016 and highlight the allocation process which would be followed should it be necessary to prioritise (within all eligible catchment pupils) for places in JGHS for August 2016.
- The letter also advised that it was likely that, based on distance, those pupils who may be unsuccessful would be pupils currently attending P7 in Bun-sgoil Taobh na Pàirce. It then highlighted that, in such an eventuality, if any pupils were unsuccessful in getting a place at JGHS and they wished to continue their Gaelic studies they would be offered a place at Tynecastle High School otherwise they could choose to attend their local denominational or non-denominational catchment school. Any other pupils would be offered an alternative place in a nearby school.
- On 29 February 2016 a very slightly amended version of the 'SMSP 2016' report was circulated to members of the Committee which removed an incorrect hyperlink in the background reading section.
- On the morning of 1 March 2016 members of the Committee were advised that the 'SMSP 2016' report had been withdrawn by the Acting Executive Director of Communities and Families and that all organisations which had made a deputation request regarding this item had been notified.
- On 1 March 2016 a letter was sent to the parents or guardians of all pupils who had registered for an S1 place at JGHS for August 2016. The letter advised that all catchment pupils registered for S1 at JGHS, including those from Taobh na Pàirce, could attend JGHS from August 2016. It advised that arrangements would be put in place to manage the increased S1 roll for 2016/17 and that an update on these arrangements, and any potential implications, would be provided in the near future.

- 3.7 The foregoing was the normal due process which requires to be followed for Committee reports in advance of publication therefore the way in which the 'SMSP 2016' report was produced and submitted to Committee for consideration was fully compliant with all Council requirements.
- 3.8 There was a series of other related events, as follows:
- On 29 February [2016] a letter was sent to the Chief Executive by Bòrd na Gàidhlig which, in accordance with its request, was circulated to members of the Education, Children and Families Committee. A copy of this letter is included in Appendix 2.
 - At 14:57pm on 29 February 2016 a letter was sent to the Council by Anderson Strathern LLP, acting on behalf of Bòrd na Gàidhlig, a copy of which is included in Appendix 4. The letter advised that Anderson Strathern LLP had been instructed to raise judicial review proceedings against the Council regarding decisions it was purported to have either taken, or was intending to take, and sought a written undertaking by 15:30pm that afternoon that the Council would not progress these.
 - Under the threat of Anderson Strathern seeking interim interdict from the Court that evening to secure the withdrawal of the report, at 17:23pm on 29 February 2016 the Council confirmed to Anderson Strathern LLP that the 'SMSP 2016' report had been withdrawn from the agenda of the Education, Children & Families Committee on 1 March 2016. This removed the threat of interim interdict.
- 3.9 The action to withdraw the report was not due to there having been considered to be substantive issues raised by Anderson Strathern which could not have been defended by the Council if that had proved to have been necessary. The Council's position and opinion regarding these matters differs from that expressed by Anderson Strathern and is explained in Appendices 4 and 5.
- 3.10 The report was withdrawn as there was considered to have been a significant risk that, if sought, an interim interdict would have been granted. As there was actually no pressing requirement for the 'SMSP 2016' report to be considered by Committee on 1 March 2016 as it provided members with an update rather than seeking any decisions, it would have been difficult for the Council to have presented an argument regarding why an interim interdict should not have been granted, pending the determination of the Judicial Review.
- 3.11 In answering the question posed by the Governance, Risk and Best Value Committee regarding whether due process was followed, it is necessary to respond to the suggested issues which were raised in the letters from both Bòrd na Gàidhlig and Anderson Strathern LLP.
- 3.12 Responses to the suggested issues which were raised in these letters - the majority of which had been considered by, and were the subject of discussion between, Council officers in Communities and Families and Legal Services in

advance of the 'SMSP 2016' report being published - are included in Appendices 4 and 5.

- 3.13 These responses exemplify that due process was followed and that it is the Council's opinion that the approach which had been intended to address the capacity issue at JGHS (as set out in the 'SMSP 2016' report which was withdrawn) involved no breaches of legislation.

Lessons Learned

- 3.14 The circumstances which arose at JGHS were as a result of an unprecedented and unexpected high level of S1 intake requests into the school for August 2016 from both local catchment pupils and those wishing to transfer from Bunscoil Taobh na Pàirce.
- 3.15 The capacity of any school is not unlimited and, whilst discussions with the management team of JGHS had identified that the S1 intake could have been increased from the standard 200 to (at that time what was considered to have been a maximum of) 220, this would have been insufficient to meet the projected demand for eligible places which was 229. Therefore the Council was faced with a very real and significant issue regarding a lack of available capacity at JGHS as there were anticipated to be more pupils than the school could accommodate, the potential consequences of which could have affected some of those pupils wishing to transfer from Taobh na Pàirce.
- 3.16 An alternative option for GME pupils to attend a different secondary school if they wished was identified, specifically due to the fact that it was acknowledged that the circumstances relating to any GME pupils who might be affected by the intake cap required an approach to be taken that recognised their particular educational needs. Simply referring those pupils back to their mainstream catchment schools would neither acknowledge nor meet these needs. Consideration of an option at Tynecastle High School was a means to provide pupils with a possibility to still pursue Gaelic learning at secondary level, albeit at a different school.
- 3.17 It is fully accepted that from an educational perspective the circumstances were far from being satisfactory. The nine children who it was estimated would have potentially been affected had already commenced their induction and transfer process to JGHS. Whilst the provision of a place in S1 at JGHS was still provisional and had not yet been confirmed, these children would have had an understandable expectation of being able to attend the school as they had planned and intended.
- 3.18 Rising school rolls have been a challenge in the school estate for some years. To date this had predominantly been a feature in the primary school estate however, despite the significant growth which has been experienced, the planned delivery of additional accommodation and other actions taken through the Council's rising rolls programme has resulted in there being very few

accommodation issues. However, the effects of rising rolls continue to be felt across the whole primary school estate which demonstrates the growing challenge faced by the Council and the value in maintaining a responsive rising rolls programme.

- 3.19 In the secondary sector, following a period of decline, S1 intakes have begun to increase. The S1 intake in August 2015 was the highest since 2010 and is likely to be matched by a similar intake in August 2016. However, the overall secondary school roll continues to fall with the 2016/17 session expected to mark its lowest point. Beyond 2016/17 it is expected that rolls will begin to grow quickly as larger numbers in the primary sector begin to filter into secondary. There will be further pressures on the school estate as a consequence of the significant level of housing which is planned in the city over the next five to ten years.
- 3.20 The potential capacity issue at JGHS was identified relatively late and, whilst a solution was ultimately identified to address the issue, this did not happen until after the potential issue, and the likely consequences arising as a result of it, had been (by necessity due to the publication of the 'SMSP 2016' report) very publicly communicated.
- 3.21 Council officers involved in the process met to consider what lessons could be learned from the recent experience and to identify any areas regarding which there may be the opportunity/necessity to change in the future. Whilst this was an unprecedented set of circumstances which arose, given the increasing pressures on the school estate it is not inconceivable that this could very possibly arise at a different school in the future.
- 3.22 A number of possible areas for improvement were identified which have been summarised below.

What could the Council do to identify any such issues, or the risks of them occurring, earlier in the school year? Should the timing of any Council processes be brought forward?

- 3.23 Address checks have been undertaken which, whilst not yet complete, have already identified three fraudulent registrations regarding the JGHS S1 intake which contributed to the capacity issue (but have since been removed thus contributing to the reduction in the S1 registrations which are now at 229).
- If the capacity to do so was available the Council could undertake these address checks earlier in the year.
 - Whilst seeking a prosecution in such circumstances would be difficult, greater awareness of this issue may act as a deterrent.
 - There may already be issues in other year stages within the JGHS feeder primaries and those for other high demand secondary schools e.g. families moving out of the area and not notifying the school of a change of address,

perhaps deliberately. Consideration could be given to undertaking a blanket check for all year stages in some key schools areas.

- In the secondary sector there is an automatic allocation of a place into the S1 catchment school and parents are not required to sign any documentation to formally confirm their current address. The Council could make this mandatory, perhaps using an online registration system, as this might force any parents who have moved (but had not advised the Council) to concede that they have, or it would support a case for prosecution if they confirmed an address which was invalid.
- In some local authority areas if a family moves out of a catchment area the entitlement for their children to attend the catchment school ceases immediately. This is considered to perhaps be too extreme a measure.

3.24 The school roll forecast data is updated in November each year when the annual school census data is received. The school catchment data could be extracted earlier, most logically at the end of September, to provide an earlier indication regarding any potential S1 issues.

3.25 The entire placing process could be brought forward:

- The closing date for providing catchment places, based on being resident in the area by that point, could be brought forward from the end of February to the end of December to reduce the risk of changes happening in the demand for catchment places in January and February. There is considered to be logic in this as the timescale would align with the existing deadline for non-catchment placing requests.
- The entire process, including the closing date for non-catchment placing requests, could be further brought forward by a (further) month from the end of December to the end of November. This would allow the Communities and Families Officer Working Group to meet in December rather than in January and would also allow more informed decision making regarding any rising rolls issues. This would require a change to how we manage placing in denominational schools.

3.26 The [Council Policy on Admissions to Mainstream Schools](#) does not include any reference to a catchment guarantee but states (in paragraph 4.2.4) that “the Council aims to provide places for P1 and S1 pupils at their catchment school if they are living in the catchment area by the end of February of the year that they will start in P1 and S1”. In paragraph 4.2.12 the policy then states “First year intake limits, classroom size restrictions and limits on the overall pupil numbers will be applied where necessary to assist in managing school provision.”

3.27 However, the related procedure and accompanying Placements Timeline goes further and makes reference to a catchment guarantee. It states “28 February. Catchment guarantee date. All children who are resident in the catchment area

by this date are guaranteed a place in their non-denominational catchment school unless they move address before the start of the coming session. New Intake Registration screen and Delete Registration screen locked from this date – schools to email late P1 registrations after this date to School Placements team.”

- 3.28 This is inconsistent with the Council policy which provides no such guarantee as there may be circumstances which are entirely outwith the Council’s control which may mean that this could not be honoured. The wording in the procedure and accompanying Placements Timeline should be amended to bring it into line with the Council policy.

How could the Council ensure that it has exhausted all possibilities to deal with any capacity issues arising, including those which might have an impact on future years, to ensure that these could at least be considered?

- 3.29 The S1 intake limit for a school does not necessarily reflect its capacity to accommodate S1 pupils in any given year which will be a function of the other cohort. We could review our capacity methodology to have a more dynamic approach to S1 intake limits each year rather than them always being fixed.
- 3.30 Schools (or at least those very popular schools which are at particular capacity risk) could undertake scenario planning at the very start of each year to explore if and how (should the eventuality arise) an additional S1 intake of either 20 or 40 pupils could be accommodated (if that was possible). The remaining school cohort would be known and assumptions could be made regarding S5/S6 drop-off rates.
- 3.31 Any implications arising from such circumstances (e.g. creating a restriction in future subject provision) could then be discussed with the school parent council. By considering this early in the school year it would allow sufficient time to consider complex timetabling requirements well in advance of when any issues may arise and provide certainty regarding what would, and would not, be possible.
- 3.32 Were an issue to subsequently arise the decision regarding what an appropriate S1 intake limit should be would then be for the school to make in the full knowledge of the implications and consequences of any decision to increase it beyond the standard level.

On identifying any issue and having exhausted all options to deal with it, how should the Council engage with the wider school community?

- 3.33 This has been covered above to an extent. Earlier awareness of potential issues would clearly be beneficial coupled with prior thinking regarding the ability of the school to accommodate any S1 capacity issues arising.

- 3.34 The Council has a process in place where Primary Head Teachers are asked to share class organisations/organise special Parent Council meetings in early February to discuss any potential issues but that currently does not happen at secondary level. This could, perhaps, be incorporated in the future if potentially other secondary schools are starting to see increased S1 intakes in future years.
- 3.35 The production of the annual Strategic Management of School Places - P1 and S1 Report itself and the timing thereof is an issue. Being published in late February and not long after the Communities and Families Officer Working Group has met in January leaves little time to identify any issues and consider options to deal with them, particularly when they are so unexpected (as was the case for JGHS this year).
- 3.36 The necessity to publicise and communicate the potential issue which was identified at JGHS was driven by the timing of the 'SMSP 2016' report being published. As the annual report is now predominantly an update report with no decisions being required other than noting, could it perhaps be produced for the May Committee meeting or is it required at all as any key rising rolls issues are dealt with through the separate reports to Committee regarding rising rolls?
- 3.37 Once the potential issue regarding capacity at JGHS was identified, although it was anticipated to have a potential impact on only nine pupils, the Council wrote to all 243 potentially affected sets of parents and guardians to highlight the issue and the potential impact. Details were available regarding sibling and distance therefore it would have been possible to have written a more targeted letter to a much smaller number of parents and carers for whom the risk of there being an impact was the greatest. Whilst there is a necessity to ensure that all parents are kept informed, perhaps a different approach could have been taken which would have avoided all parents and guardians having the same level of uncertainty.

Next Steps and Consultation

- 3.38 A number of lessons learned and possible actions have been identified above. These will be subject to consultation with the Head Teachers Executive and the Consultative Committee with Parents (at the next scheduled meeting on 19 May 2016) prior to decisions being taken regarding the implementation, or otherwise, of any changes for the 2016/17 School Placements process.

Measures of success

- 4.1 There are no measures of success associated with this report.

Financial impact

- 5.1 There are no financial implications arising directly from this report.

Risk, policy, compliance and governance impact

6.1 There are no risk, policy, compliance or governance issues arising directly from this report.

Equalities impact

7.1 There are no equalities issues arising directly from this report.

Sustainability impact

8.1 There are no sustainability issues arising directly from this report.

Consultation and engagement

9.1 A number of lessons learned and possible actions have been identified above. These will be subject to consultation with the Head Teachers Executive and the Consultative Committee with Parents (at the next scheduled meeting on 19 May 2016) prior to decisions being taken regarding the implementation or otherwise of any changes for the 2016/17 School Placements process.

Background reading/external references

None

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Links

Coalition pledges	Not applicable
Council outcomes	Not applicable
Single Outcome Agreement	Not applicable
Appendices	<ol style="list-style-type: none">1. Extracts from the 'Strategic Management of School Places: P1 and S1 Intakes for August 2016' report to the Education, Children and Families Committee on 1 March 2016 which was withdrawn2. Letter of 29 February [2016] from Bòrd na Gàidhlig3. Council response to matters raised in the letter of 29 February [2016] from Bòrd na Gàidhlig4. Letter of 29 February 2016 from Anderson Strathern LLP, acting on behalf of Bòrd na Gàidhlig5. Council response to matters raised in the letter of 29 February 2016 from Anderson Strathern LLP, acting on behalf of Bòrd na Gàidhlig

Appendix 1

Extracts from the 'Strategic Management of School Places: P1 and S1 Intakes for August 2016' report to the Education, Children and Families Committee on 1 March 2016 which was withdrawn

Executive summary

In the secondary sector, the number of registrations for S1 in August 2016 is comparable with the equivalent time in August 2015. However, the S1 figures include a high number of catchment registrations, including those pupils transferring from Bun-sgoil Taobh na Pàirce, for James Gillespie's High School where it is possible that some pupils may not be successful in gaining a place at the school.

Recommendations

- 1.1 Note the content of this report.
- 1.2 Note that Gaelic Medium pupils unsuccessful in gaining a place at James Gillespie's High School will be offered a place at Tynecastle High School or may accept a place at their mainstream catchment school.

Main report

- 3.57 James Gillespie's High School currently has 243 S1 catchment registrations and an S1 intake limit of 200 pupils. Between January 2015 and August 2015 the school experienced a 6% drop in its registration numbers and a similar scale of drop off is anticipated between January 2016 and August 2016. Accordingly, by August 2016 it is estimated that there will be demand for 229 catchment S1 places at the school.
- 3.58 A review of the accommodation and timetabling requirements of the school suggests that the standard intake limit of 200 S1 pupils may, for 2016/17, be increased to a maximum of 220 pupils. This means there is a possibility that an estimated nine catchment pupils may not be successful in gaining a place at James Gillespie's High School in August 2016.
- 3.59 James Gillespie's High School is the designated secondary school to which pupils transferring from the city's Gaelic Medium Primary School, Bun-sgoil Taobh na Pàirce, currently feed. Pupils from Bun-sgoil Taobh na Pàirce account for 24 of the 243 S1 registrations for August 2016 with one of these pupils living outwith the city.
- 3.60 It is Council policy that, where there is a need to prioritise within catchment pupils, having provided places for those with siblings already in the school, pupils entitlement to a place will be assessed on the basis of distance from the school. Accordingly, should it be necessary to consider prioritisation of places

within catchment pupils, as the Gaelic Medium Education (GME) catchment area covers the entire city and the Lothians it is anticipated that the pupils unsuccessful in gaining a place at James Gillespie's High School are likely to be some of those transferring from Bun-sgoil Taobh na Pàirce.

- 3.61 GME pupils unsuccessful in gaining a place at James Gillespie's High School would be offered a place at Tynecastle High School which also offers some Gaelic provision or may choose instead to attend their mainstream catchment school.
- 3.62 The number of S1 pupils residing in the James Gillespie's High School catchment area and attending that school has not exceeded 163 pupils in the last five years and, while an increase was anticipated for the 2016/17 session, the number of registrations suggests that the scale of the increase will exceed expectations. Projections would suggest that this is a spike. However, there are several factors which mean high intakes should be anticipated in the years that follow:
- (i) there has been an increase in the percentage of pupils transferring from P7 to S1 within the James Gillespie's High School catchment area. For example, in 2010 there were 178 P7 pupils registered at a Council run non-denominational primary school residing in the James Gillespie's High School catchment area. In 2011 there were 153 non-denominational S1 pupils residing in the same area. This represented a drop of 14% in the population between P7 and S1 and is principally attributed to loss to the private sector. By 2012 this drop off had reduced to 9.9% and last year this reduced further – to 7.6%.
 - (ii) the percentage of the available S1 population within the James Gillespie's High School catchment choosing to attend James Gillespie's High School has increased. This is as a result of a drop in the number of pupils requesting and gaining a place at another non-denominational secondary school and a fall in the percentage of pupils from the James Gillespie's High School catchment area choosing to attend St Thomas of Aquin's RC High School. Between 2010 and 2015 the percentage of the S1 catchment population attending another non-denominational school fell from 12.6% to 4.2% while the percentage attending St Thomas of Aquin's RC High School fell from 15.9% to 10.0%.
- 3.63 The changes in attendance patterns identified above are the same as were identified in the Strategic Management of School Places report in 2015 as factors contributing to pressure on the S1 intake at Boroughmuir High School at the equivalent time last year. Accordingly, while catchment populations at both schools are forecast to rise, changing patterns of attendance represent an equal challenge and, in part at least, may be explained by the draw of new, state of the art school buildings which both schools will shortly occupy.

3.64 In the short term, further work will be undertaken with school management at James Gillespie’s High School to establish the extent to which an intake level of 220 pupils may be sustained. However, it should be noted that even with this level of intake, the challenge posed by rising rolls and the changing patterns of attendance outlined above is significant and does not take account of the annually increasing demand for Gaelic Medium Education places. Accordingly, further work will be undertaken as part of the review of secondary school capacities to identify means of addressing rising rolls in the secondary sector.

Actions:

- *Increase the S1 intake limit to 220 pupils and review the sustainability of this level for future intakes;*
- *Offer those Gaelic Medium pupils unsuccessful in gaining a place at James Gillespie’s High School a place at Tynecastle High School.*

Gaelic Medium Education

3.66 In the primary sector Gaelic Medium Education (GME) is provided at the dedicated GME Primary School, Bun-sgoil Taobh na Pàirce. The catchment area for this school is Edinburgh and the Lothians; this being a legacy from Lothian Regional Council. Pupils from Bun-sgoil Taobh na Pàirce then have the option to transfer into James Gillespie’s High School.

3.67 Demand for places at Bun-sgoil Taobh na Pàirce continues to be very healthy with there currently being 64 registered pupils for the P1 intake in August 2016 including four from outwith Edinburgh. However there are three placing requests out and a number of deferrals are anticipated therefore an intake limit of 60 has been set.

3.68 The table below shows an analysis of the pupil roll at Bun-sgoil Taobh na Pàirce as at the September 2015 census. This shows, by year group, the total pupils by locality and shows a growing trend emerging of a significant proportion of the pupils attending the school coming from the north of the city, particularly the North East which is the locality in which the primary school is located. Within the P1 intake in August 2015, 63.1% of the pupils were from the North East locality with 82.5% being from the north of the city. Of the 60 Edinburgh pupils registered for P1 in August 2016, 38.3% are from the North East locality with 73.3% being from the north of the city.

Locality	P1	P2	P3	P4	P5	P6	P7	Total	% Total
North East	36	20	16	8	4	3	5	92	35.1%
North West	11	16	16	10	5	8	10	76	29.0%
South East	7	13	10	9	9	9	5	62	23.7%
South West	2	5	8	5	4	5	3	32	12.2%

Locality	P1	P2	P3	P4	P5	P6	P7	Total	% Total
Sub-Total CEC	56	54	50	32	22	25	23	262	100.0%
Out of Council	1	9	6	1	3	4	1	25	
Total	57	63	56	33	25	29	24	287	

- 3.69 Under section 5 (1) of the recently introduced Education (Scotland) Act 2016, a person who is the parent of a child who is under school age and has not commenced attendance at a primary school may request the education authority in whose area the child is resident to assess the need for Gaelic medium primary education. The City of Edinburgh Council has already made a very significant commitment to the development and delivery of Gaelic medium primary education through the establishment of Bun-sgoil Taobh na Pàirce which is a double-stream school with an annual intake limit of 60 which could be increased by exception to 66 should circumstances require it. There is currently no evidence to suggest that the demand for GME at a primary level would require any expansion of the existing capacity at primary level however this will be kept under review.
- 3.70 At secondary school level, as is explained earlier in this report, there is pressure on the capacity available at James Gillespie's High School to meet both local catchment demand and GME pupils transferring from Bun-sgoil Taobh na Pàirce. For 2016/17 this may result in some pupils not being able to be accommodated at James Gillespie's High School and, in such circumstances, should it be necessary to consider prioritisation of places within catchment pupils it is anticipated that those pupils who would be unsuccessful in gaining a place at James Gillespie's High School are likely to be some of those transferring from Bun-sgoil Taobh na Pàirce.
- 3.71 For 2016/17 the impact has been, to an extent, mitigated by increasing the S1 intake limit from 200 to 220 pupils however, the sustainability of this level for future S1 intakes requires to be reviewed. In future years it is likely that, as both the numbers of local catchment pupils and those transferring from Bun-sgoil Taobh na Pàirce increase, a number of pupils will be unsuccessful in gaining a place at James Gillespie's High School and, due to prioritisation based on distance from the school, are likely to be some of those transferring from Bun-sgoil Taobh na Pàirce.
- 3.72 Any proposals to change the existing arrangements for Gaelic Medium Education at secondary level may, depending on what is proposed, require a statutory consultation to be undertaken in accordance with the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014.
- 3.73 The potential issue of capacity at James Gillespie's High School was identified several years ago and, at its meeting of [16 December 2010](#), Council approved

that a statutory consultation should be carried out proposing the relocation of GME provision for future S1 intakes from James Gillespie's High School to Tynecastle High School.

- 3.74 A [short life cross-party working group](#) with representatives from relevant stakeholders was established to consider the various key factors which would have arisen regarding the re-location of Secondary Level GME provision from James Gillespie's High School to Tynecastle High School. This included consideration of the content and timing of the necessary statutory consultation process including transition arrangements and costs. The short life working group met three times between February and April 2011 however the statutory consultation was ultimately never progressed.
- 3.75 There remains a necessity to assess future delivery models for Gaelic Medium Education at a secondary level to address the issue of capacity at James Gillespie's High School however, it would be premature to progress a statutory consultation at this point for the following principal reasons:
- The families which are accessing Bun-sgoil Taobh na Pàirce appear to be increasingly those who are local to the school or are elsewhere in the north of the city. This suggests that a location for secondary GME provision in the north of the city would perhaps be more logical and would significantly reduce transport costs.
 - Whilst the capacity of Bun-sgoil Taobh na Pàirce does not appear to currently be a limitation on the accessibility to primary level GME in the city; with the increasing emphasis on the adoption of the language the level of demand may change over time which will have a consequential impact on the capacity which may be required at a secondary level.
 - The level of current Gaelic provision at James Gillespie's High School is not significant and could be relatively easily replicated, at least in part. There continue to be significant issues nationally with the recruitment of Gaelic speaking staff which limit what could actually be delivered at a secondary level, regardless of where it was provided.
 - In considering what physical accommodation would be required at any secondary school to meet GME provision it will be essential to understand what the demand for Gaelic specific curricular and educational development opportunities will be. The issue regarding recruitment of appropriate staff makes it very difficult to determine what might be feasible.
 - The rising school rolls which have been experienced in the primary sector will very shortly work through to the secondary sector. The impact of this, and the significant new housing development reflected in the second proposed Local Development Plan, will mean that many secondary schools will experience significant pressure on their accommodation. Careful consideration will be required regarding what secondary schools might be

able to either accommodate GME provision within their existing capacity or would be capable of expansion to do so which would almost inevitably require significant cost.

- 3.76 In light of the above, it is not possible to carry out a meaningful statutory consultation at this time however the position will be kept under regular review. At the time when a fully informed position on actual GME demand can be established; the availability of appropriately qualified teachers can be determined and the most appropriate location(s) for any provision can be assessed, a proposal for a statutory consultation will be recommended to Committee for consideration.
- 3.77 However, in the interim, it is important to ensure that the Council continues its already significant commitment to support the development of the Gaelic language at (both primary) and secondary level. Any GME pupils who are unsuccessful in gaining a place at James Gillespie's High School would be offered a place at Tynecastle High School which already offers some Gaelic provision or may choose instead to attend their mainstream catchment school.
- 3.78 At present, the level of Gaelic Medium Education provision at James Gillespie's High School is as follows:
- There are currently 81 young people in the GME programme which is delivered through to the end of the broad general education.
 - There is an option to continue into the senior phase (S4–S6) and onto certificate level (National 5, Higher and Advanced Higher).
 - There is good uptake of GME in the senior phase (Nat 5/Higher/Advanced Higher); the vast majority of students go on to complete Higher Gàidhlig, and many also continue to do Advanced Higher Gàidhlig. Attainment is strong and above the national average.
 - Subjects being taught through the medium of Gaelic are PE, Art, Modern Studies and RME however, no subjects are currently taught through the medium of Gaelic at SQA qualification level. National 5 Modern Studies (N5 Nuadh-Eolas) through the medium of Gaelic is being offered as a choice for session 2016/17 and this class is expected to run.
 - Gaelic has been embedded into the school's life and ethos with a visible profile in multi cultural events.
 - Students participate in various creative writing and cultural competitions at national level including Scottish Book Trust Young Writers' Award, the 'National Gàidhlig Debate and the National Mod. Partnerships include Comunn na Gàidhlig (CNAG), Historic Scotland and Glasgow Gaelic School.
- 3.79 There is currently no provision of GME in the Tynecastle High School cluster however, two of the cluster primary schools currently deliver Gaelic Learner

Education (GLE); at Stenhouse Primary School from nursery onwards and in P5 to P7 in Balgreen Primary School. At Tynecastle High School itself, the current provision is as follows:

- Since August 2015, GLE is delivered in S1 and S2 for all learners. GLE provision at the school has doubled in 2015/16 with provision now continuing into S2. It is planned for this model to progress into S3.
- Half of the year group continues with a progressive programme of GLE from primary and the other half who have previously studied Mandarin follow a beginners GLE programme.
- Staffing is already shared across Tynecastle High School and James Gillespie's High School. This is a consideration for Tynecastle High School in moving forward and planning for the development of S3 courses.
- There are a range of GLE projects include partnership projects with Historic Scotland in both Stenhouse Primary and Tynecastle High School.
- Gaelic has been embedded very successfully into the life and ethos of many of the schools delivering both GME and GLE provision. Stenhouse Primary school has visible Gaelic signage throughout the school and a Gaelic choir.

3.80 In addition to the Gaelic provision which already exists at Tynecastle High School, consideration will be given to ways in which this can be further expanded, perhaps using consortium or peripatetic arrangements for the delivery of certain subjects. In this way, the Gaelic experience will be enhanced for those progressing to the school from Bun-sgoil Taobh na Pàirce and an opportunity would be created to more fully establish Tynecastle High School as an additional secondary school in the city offering an improved Gaelic experience which would be available to pupils within the school catchment and those who may wish to seek a placing request into the school.

Equalities impact

7.2 The Council will endeavour to make available places for all registered S1 pupils at James Gillespie's High School. However, where it is not possible to provide places for S1 pupils at James Gillespie's High School seeking Gaelic Medium Education, a place will be offered at Tynecastle High School which also offers Gaelic classes.

Appendix 2

Letter of 29 February [2016] from Bòrd na Gàidhlig

29 February

Andrew Kerr
Chief Executive
Edinburgh City Council
City Chambers
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Edinburgh
EH1 1YJ

Andrew a charaid,

You will no doubt be aware of the serious concerns surrounding the paper before the Education, Children & Families Committee on Tuesday 1 March. This we find very disappointing because we have been heartened by the support of the Council to date for Gaelic-medium education (GME) and how successful Bun-sgoil Taobh na Pàirce was turning out to be. You can imagine my surprise and real disappointment to hear of the plans regarding the P7 transfer to James Gillespie's High School (JGHS). I would like you and your colleagues to consider the views expressed below as a matter of some urgency. You will perhaps know that I am a former Director of Education of some 12 years standing and someone who is well versed in the situations which the Council will consider on Tuesday.

I have very serious concerns over this matter on a number of fronts:

1 From an educational point of view, it is simply bad and unacceptable practice to consider denying some of the Primary 7 pupils a place in JGHS and suggest that they could go to a school that offers no GME provision. These children have commenced their induction and transfer process to be told that they now may not attend their designated school for Secondary GME. If this comes to pass, the children involved will have wasted seven years in GME. This is quite unprecedented in my 40 years in education, 23 of these spent in educational administration. I think these children will be significantly disadvantaged educationally if the Council approves the paper on Tuesday.

2 All Councils have standards and processes that they are expected to follow when making the sorts of decisions that Members are being asked to take on Tuesday. To take this proposal to Tuesday's Committee without any consultation with parents is unacceptable by any standards and I would have expected better from the officials of the Council. I am sure that Audit Scotland would be of this view as would other local authority regulators. In summary due process has not been followed and the Council officials are demonstrating a lack of accountability to the parents and pupils involved.

3 If the Committee accept the proposals before them on Tuesday, then the children who are denied a place will be the subject of significant equalities discrimination. To allow them to have their education to date delivered through the medium of Gaelic, build a culture and ethos of learning and social activity that is unique to GME, develop personal and peer group links in their school, and, some 12 weeks before they're due to transfer to their zoned school, be told they're not going to JGHS with their peers, is morally wrong and in my view, discriminatory on equalities grounds.

4 The report to the Committee does mention educational legislation, quite correctly. The 2010 School Consultation Act is clear on the requirements of Education Authorities in situations such as this. If Tynecastle High School is to become a designated school for Gaelic Medium Education, then a formal consultation under the terms of the Act is required. That has not taken place and therefore the proposals in the paper contravene the Legislation and should be dropped. I would also question the use of distance from school which founds on the 1980 Act in placing request terms. The whole of the City is the catchment area for JGHS for GME purposes and therefore distance from the school is an invalid criterion to use.

I hope that in reading this, the authors of the report and the Director will think carefully about the status of the paper before Elected Members. I think there is enormous risk to the Council if the proposals are adopted. I am genuinely trying to use my good offices in this email to you. The Council in recent years has been enormously supportive of Gaelic and in particular GME but these proposals, if accepted, will be detrimental in a number of ways, but most importantly for the children involved.

I should also advise you that the Bòrd is taking legal advice on the proposals which we feel are fundamentally flawed for the reasons outlined above.

I am, as always, more than happy to discuss further but I would also ask that this email is forwarded to the Acting Director, the Chief Executive, Group Leaders and members of the Committee.

Leis gach deagh dhùrachd,



BRUCE ROBERTSON OBE
Interim CEO, Bòrd na Gàidhlig

Appendix 3

Council response to matters raised in the letter of 29 February [2016] from Bòrd na Gàidhlig

1 Point 1

- 1.1 Bòrd na Gàidhlig stated *“From an educational point of view, it is simply bad and unacceptable practice to consider denying some of the Primary 7 pupils a place in JGHS and suggest that they could go to a school that offers no GME provision. These children have commenced their induction and transfer process to be told that they now may not attend their designated school for Secondary GME. If this comes to pass, the children involved will have wasted seven years in GME. This is quite unprecedented in my 40 years in education, 23 of these spent in educational administration. I think these children will be significantly disadvantaged educationally if the Council approves the paper on Tuesday.”*
- 1.2 The circumstances which arose at JGHS were as a result of an entirely unprecedented and unexpected high level of S1 intake requests into the school for August 2016 from both local catchment pupils and those wishing to transfer from Bun-sgoil Taobh na Pàirce (TnP). The consequence was that there were anticipated to be more pupils than the school could accommodate.
- 1.3 The capacity of any school is not unlimited therefore the Council was faced with a very real and significant issue regarding (what was understood at that time to have been) a lack of available capacity at JGHS. It is that lack of capacity which could have meant that some P7 pupils could potentially not have been accommodated at JGHS if the available capacity would have been exceeded.
- 1.4 The standard annual S1 intake limit for JGHS is 200 and the discussions which had taken place in advance of the publication of the report between the management of JGHS and the school estate planning team had collectively concluded that a maximum intake limit of 220 was possible. This resulted in the very difficult decision having been taken to cap the S1 intake limit at 220, in itself a 10% increase, as a consequence of which there was then a possibility that some children might not be accepted into JGHS at S1 in August 2016. The potential consequences of this could have affected some of those pupils wishing to transfer from TnP.
- 1.5 The Council recognised the demand that exists and has a strong commitment to developing Gaelic Medium Education (GME) across the city as evidenced by the success of its Gaelic immersion primary school. The purpose of identifying an entirely discretionary alternative option at Tynecastle High School (THS) was to actively seek a solution which would have allowed pupils from TnP who might not have had the opportunity to attend JGHS to continue with their Gaelic studies.

- 1.6 The alternative option for GME pupils to attend a different secondary school if they wished was identified specifically due to the fact that it was acknowledged that the circumstances relating to any GME pupils who might be affected by the intake cap required an approach to be taken that recognised their particular educational needs.
- 1.7 Simply referring those pupils back to their mainstream catchment schools would neither acknowledge nor meet these needs. Consideration of an option at Tynecastle High School (THS) was a means to provide pupils with a possibility to still pursue Gaelic learning at secondary level, albeit at a different school. Tynecastle had been the focus of discussion for GME in 2010/11 and, indeed, the Council had previously approved that a statutory consultation be progressed regarding the transfer of secondary GME from JGHS to THS albeit this was ultimately never progressed. Due to the level of existing Gaelic provision it was considered to be the most logical alternative.
- 1.8 The statement that the proposed model would have “wasted seven years in GME” fails to recognise the Council’s continuing commitment to developing and enhancing GME provision. As was explained in the report (extracts from which are provided in Appendix 1), the level of Gaelic provision at JGHS, GME or otherwise, is relatively minor and many of these elements could, it was considered, have been successfully replicated at THS, building on the Gaelic provision which already exists at the school.

2 Point 2

- 2.1 Bòrd na Gàidhlig stated *“All Councils have standards and processes that they are expected to follow when making the sorts of decisions that Members are being asked to take on Tuesday. To take this proposal to Tuesday’s Committee without any consultation with parents is unacceptable by any standards and I would have expected better from the officials of the Council. I am sure that Audit Scotland would be of this view as would other local authority regulators. In summary due process has not been followed and the Council officials are demonstrating a lack of accountability to the parents and pupils involved.”*
- 2.2 Regarding the criticism of a lack of consultation with parents and a suggested lack of adherence to Council standards and processes, as has been exemplified earlier in this report the approach which was taken was entirely in accordance with all Council requirements and due process was followed.
- 2.3 There was no proposal to Committee. As is clearly evidenced in the various recommendations in the report, members of the Committee were being asked to note the position, this being the latest such annual report to Committee which explains the expected position regarding forthcoming P1 and S1 intakes and any issues arising. Members of the Committee were not being asked to take decisions regarding any proposals and none were presented to them.

- 2.4 The issue at JGHS was one of a lack of sufficient capacity at the school and it is unclear what consultation Bòrd na Gàidhlig considers could have been taken regarding this matter in any event. Having identified it as a potential issue once the anticipated intake position was determined in January, it was considered to be appropriate to advise both parents and elected members at the earliest opportunity.

3 Point 3

- 3.1 Bòrd na Gàidhlig stated *“If the Committee accept the proposals before them on Tuesday, then the children who are denied a place will be the subject of significant equalities discrimination. To allow them to have their education to date delivered through the medium of Gaelic, build a culture and ethos of learning and social activity that is unique to GME, develop personal and peer group links in their school, and, some 12 weeks before they're due to transfer to their zoned school, be told they're not going to JGHS with their peers, is morally wrong and in my view, discriminatory on equalities grounds.”*
- 3.2 Members of the Committee were not being asked to accept any proposals and none were presented to them.
- 3.3 The suggestion that any children (from TnP) who would have been denied a place would have been the subject of significant equalities discrimination is not correct; discrimination would require for them to be treated less favourably than others, this was not the case here.
- 3.4 In the circumstances of having insufficient capacity to meet catchment demand, prioritisation for places would have been based first on siblings and then on distance. This would have been a fair, consistent and equitable approach to considering the circumstances of all pupils who were entitled to attend JGHS. The provision of an alternative option at THS was a way in which the Council believed the impact on any children from TnP who might have been affected could have been mitigated.

4 Point 4

- 4.1 Bòrd na Gàidhlig stated *“The report to the Committee does mention educational legislation, quite correctly. The 2010 School Consultation Act is clear on the requirements of Education Authorities in situations such as this. If Tynecastle High School is to become a designated school for Gaelic Medium Education, then a formal consultation under the terms of the Act is required. That has not taken place and therefore the proposals in the paper contravene the Legislation and should be dropped. I would also question the use of distance from school which founds on the 1980 Act in placing request terms. The whole of the City is the catchment area for JGHS for GME purposes and therefore distance from the school is an invalid criterion to use.”*
- 4.2 Bòrd na Gàidhlig suggested that if Tynecastle High School (THS) was to become a designated school for Gaelic Medium Education then a formal

consultation under the act would be required. However the report did not include any such proposal for THS to become a designated school for Gaelic Medium Education and no formal consultation under the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014 was required.

- 4.3 What the report stated was “In addition to the Gaelic provision which already exists at Tynecastle High School, consideration will be given to ways in which this can be further expanded, perhaps using consortium or peripatetic arrangements for the delivery of certain subjects. In this way, the Gaelic experience will be enhanced for those progressing to the school from Bun-sgoil Taobh na Pàirce and an opportunity would be created to more fully establish Tynecastle High School as an additional secondary school in the city offering an improved Gaelic experience which would be available to pupils within the school catchment and those who may wish to seek a placing request into the school.”
- 4.4 The purpose of identifying an entirely discretionary alternative option at THS was to actively seek a solution which would have allowed pupils from TnP who might not have had the opportunity to attend JGHS to continue with their Gaelic studies.
- 4.5 The only relevant proposals under Schedule 1 of the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014 which specifically reference Gaelic Medium Education are those within part 1 which relate to closure.
- 4.6 The subsequent letter from Anderson Strathearn did not include any reference to a suggestion of THS becoming a designated school for Gaelic Medium Education but identified several other aspects of the approach which it was suggested were relevant proposals i.e. that part of JGHS was being relocated to THS; that there was a variation to an existing admission arrangement and finally that there was a variation of the arrangements for the transfer of some pupils from a primary school to a secondary school. These points are addressed in Appendix 5. There was no contravention of the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014.
- 4.7 Bòrd na Gàidhlig questioned the use of distance from school for prioritisation, referenced the 1980 Act and stated that the whole of the City is the catchment area for JGHS for GME purposes and therefore distance from the school is an invalid criterion to use.
- 4.8 The relevance of, and reference to, the Education (Scotland) Act 1980 is unclear as this legislation contains no provisions which suggest that distance would not be an appropriate criterion to use and, indeed, it is one which the Council uses consistently in its placing arrangements. It is difficult to comment

further on this point as the letter from Bòrd na Gàidhlig does not explain why it was considered to be invalid or what it would have suggested a more appropriate criterion would have been.

- 4.9 Bòrd na Gàidhlig is incorrect in suggesting that the whole of the City is the catchment area for JGHS for GME purposes. There is no catchment area for secondary GME in Edinburgh. JGHS is the secondary school which pupils transferring from TnP can attend if there is capacity and should they wish to continue with GME; it is not possible for a pupil to enter S1 in JGHS (or at any year stage) for GME without them having already attended TnP. The catchment area for those pupils who wish to attend TnP is currently Edinburgh and the Lothians.

Appendix 4

Letter of 29 February 2016 from Anderson Strathern LLP, acting on behalf of Bòrd na Gàidhlig



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Mr Nick Smith
 Acting Head of Legal and Risk Resources
 City of Edinburgh Council

If calling, please ask for: Fiona Killen
 Direct Dial: 0131 625 7296
 Fax: 0131 625 8035
 Email: fiona.killen@andersonstrathern.co.uk

By email and fax

Your Ref: BnG
 Date: 29 February 2016

Dear Mr Smith

Gaelic Medium Pupil Entry to James Gillespie’s High School

We are contacting you on behalf of our client, Bòrd na Gàidhlig (the Bòrd).

We understand that the Council has issued a report (the report) that will be considered by the Education, Children and Families Committee (the Committee) at its meeting on 1 March 2016. The report sets out certain matters in respect of S1 intakes for August 2016, in particular in relation to Gaelic Medium Education at James Gillespie’s High School. The report states that two actions will be taken: (1) to increase the S1 intake limit to only 220 pupils and review the sustainability of this level for future intakes; and (2) offer those Gaelic Medium pupils unsuccessful in gaining a place at JGHS a place at Tynecastle High School [see § 3.64]. The Committee is invited to note the contents of the report and to note that Gaelic medium pupils unsuccessful in gaining a place at JGHS will be offered a place at Tynecastle High School or may accept a place at their mainstream catchment school [see § 1.2].

The Bòrd is a statutory consultee. The interests of a number of pupils are affected. It is apparent that a number of GME pupils expecting to start at JGHS in August 2016 are unlikely to be permitted to do so. They are directly affected. The precise number is not known, nor are the identities of the pupils thus affected. In addition, the GME pupils starting at JGHS are indirectly affected insofar as an overall reduction in numbers of GME pupils is likely to result in diminished benefits of GME.

The nature of the decision before the Committee on 1 March 2016 is unclear. It appears that an administrative decision has been made. To the extent that noting the decision will have the consequence that it is ratified, the Bòrd seeks to prevent such a step being taken. In any event, the Bòrd seeks review of the decision.

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EDINBURGH

GLASGOW

EAST LOTHIAN



The Council will be aware of the existing arrangements in respect of GME provision at secondary level. JGHS is the only secondary school in Edinburgh that provides GME. Tynecastle High School does not provide GME.

The Bòrd is concerned that the decision has been taken on an unlawful basis. In particular:

- The Council is in breach of its statutory obligations under the Schools (Consultation) (Scotland) Act 2010. The Council is required to consult on a "relevant proposal", as defined in section 2 of and Schedule 1 to the Act.
- The proposed action is a relevant proposal within the meaning of paragraph 3 of Schedule 1. Insofar as the decision purports to transfer the provision of some Gaelic Medium education to Tynecastle High School, it is relocating part of the school.
- It is also a relevant proposal within the meaning of paragraph 4 of Schedule 1. It is a variation of an existing admission arrangement.
- It is also a relevant proposal within the meaning of paragraph 5 of Schedule 1. It will vary the arrangements for the transfer of some pupils from a primary school to a secondary school.
- The Council has failed to consult in accordance with its statutory obligations.
- Separately, the Council has not followed proper procedures at common law. Insofar as the decision has been made, that has happened without giving an adequate opportunity for those affected to make representations.
- Parents potentially affected were advised by letter dated 25 February 2016. The Bòrd was first made aware of the present situation by the parents of pupils currently attending Bun Sgoil Taobh na Pairce in Edinburgh, on Thursday 25 February 2016. The Bòrd received no direct notification about the matter from the City of Edinburgh Council.
- Further, the decision is in breach of legitimate expectations. Those pupils affected are within the category of pupils for whom a place at JGHS in GME was provided. The catchment area for GME pupils is Edinburgh-wide. They have already made plans.
- Further, the decision is unreasonable. The Council has an existing policy in respect of GME. It is acting inconsistently with its policy. Pupils who have studied in GME throughout primary school, and in many cases also attended council-provided gaelic nursery provision, may now be required to leave GME.

We have therefore been instructed by the Bòrd to raise judicial review proceedings against the City of Edinburgh Council in respect of this matter. We are concerned about the potential impact of a decision by the Committee to note the proposed action taken, or to be taken. The proceedings are being raised under necessity of seeking interim interdict against the Council in respect of this matter.

We are seeking a written undertaking from the Council by 3.30pm today that neither it, nor its Committee, will proceed to make the proposed decision, or take the proposed action, referred to in the report.

It is clearly preferable for the Bòrd not to have to raise proceedings against the Council and for interested parties to seek to discuss the matter with the Council and to decide how to take matters forward. Given the impact on the pupils concerned in respect of the S1 intake for JGHS in 2016, the only course of action that is acceptable is for the Council not to implement the actions in the report.

Looking to the future, the Council will wish to consider its options and to do so within the correct statutory framework and to act in accordance with its statutory and other obligations.

We look forward to receiving your response by 3.30pm today.

Yours sincerely

For and on behalf of Anderson Strathern LLP

Appendix 5

Council response to matters raised in the letter of 29 February 2016 from Anderson Strathern LLP, acting on behalf of Bòrd na Gàidhlig

1 Suggestion of Unlawful Decisions

- 1.1 The letter from Anderson Strathern LLP focused on two decisions or actions which they asserted that the Council had either taken, or were intending to take, which they suggested were as follows:
- (1) To increase the S1 intake limit to only 220 pupils and review the sustainability of this level for future intakes; and
 - (2) To offer those Gaelic Medium pupils unsuccessful in gaining a place at JGHS a place at Tynecastle High School.
- 1.2 The letter asserted that these decisions had been taken on an unlawful basis.
- 1.3 Whilst the respective arguments regarding these matters could obviously only have been fully considered in the event that they were debated in Court, the Council's position regarding them both differs from that expressed by Anderson Strathern on behalf of Bòrd na Gàidhlig.

2 Limitation on Available Capacity at JGHS

- 2.1 Whilst Anderson Strathern stated that the decision to increase the S1 intake limit to (to use their words "only") 220 pupils and review the sustainability of this level for future intakes was unlawful, they did not explain the basis for that assertion therefore it is not possible to specifically comment on this.
- 2.2 Their use of the term "to only 220 pupils" implied that they believed there was a higher inherent capacity available within James Gillespie's High School (JGHS) than the 220 which had been identified (which in itself, represented a 10% increase in the standard S1 intake) however they did not specify why they considered this to be the case.

3 Relevant Proposals for Statutory Consultation

- 3.1 Anderson Strathern then identified several aspects of the approach which they suggested were 'relevant proposals' under the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014 i.e. that part of JGHS was being relocated to Tynecastle High School (THS); that there was a variation to an existing admission arrangement and finally that there was a variation of the arrangements for the transfer of some pupils from a primary school to a secondary school. Their suggestion that these were changes which necessitated statutory consultation and which, in turn, should have involved Bòrd na Gàidhlig as a statutory consultee is incorrect.

- 3.2 There are, indeed, certain changes in circumstances regarding the arrangements for a school which would require to be subject to statutory consultation; these are defined in the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014 <http://www.legislation.gov.uk/asp/2010/2/contents>. This legislation applies where there are any 'relevant proposals' which are defined in Schedule 1 of the Act. To the extent that any such proposal for a statutory consultation did involve GME, Bòrd na Gàidhlig would be one of the designated statutory consultees.
- 3.3 The specific area within the legislation which applies regarding Gaelic Medium Education (GME) is any proposal to permanently discontinue the provision of any stage of GME in a school which was not the case here. Other areas - such as establishing a new school or a new stage of education; relocating (in whole or in part) a school; varying admission arrangements (including changing the catchment area) or the arrangements for transferring from primary to secondary - similarly did not apply as no changes of that nature were actually proposed.
- 3.4 The Council was not proposing to transfer part of the provision of GME from JGHS to THS. The offer which would have been made to those GME pupils who might have been unsuccessful in gaining a place at JGHS of a place at THS was entirely discretionary and did not purport to represent GME. The option at THS should not be (or have been) construed, and was never intended, as having been a formal alternative approach to the delivery of GME at secondary level but rather an alternative option which might have been of more interest to any GME affected pupils who could not be accepted into JGHS than the alternative which would have been for them to attend either their denominational or non-denominational catchment secondary school.
- 3.5 There would have been no changes to the catchment, admission or primary to secondary transfer arrangements nor were any such changes either suggested or proposed in the report.
- 3.6 The report identified an issue with the capacity of JGHS to accommodate the anticipated S1 intake for August 2016 for eligible pupils and that a maximum intake of 220 was possible (in other words the intake would require to be capped at that level). The arrangement that TnP pupils were able to transfer to JGHS was self evidently predicated on there being capacity at JGHS. If JGHS lacked capacity then places would have to be allocated within existing arrangements. There was therefore no proposal to vary existing transfer or admission arrangements.
- 3.7 The policy, procedure and arrangements for admission would have remained unchanged. What would have happened was that, if the final number of eligible pupils who wished to enter S1 at JGHS had exceeded 220, it would not have been possible to accommodate all of these eligible pupils within the capacity of the school. The issue related to the level of demand for S1 places following the

current arrangements and the capacity of JGHS to deal with it, not the arrangements themselves regarding which there were no changes.

- 3.8 This is not a unique situation and is one which the Council faces regularly when there is insufficient capacity in many of the denominational schools to accommodate demand from non-denominational catchment pupils. In such circumstances, when intake limits are capped, no statutory consultation is undertaken as there is no necessity to do so.
- 3.9 There would have been no contravention of the Schools (Consultation) (Scotland) Act 2010 as amended by the Children and Young People (Scotland) Act 2014. It would be inconceivable that a local authority did not have the ability, without the requirement to follow a lengthy statutory consultation process, to exercise any controls to limit the intake into one of its schools in exceptional circumstances where there was insufficient capacity in the school to accommodate all pupils who wished to attend.

4 Other Matters

- 4.1 Regarding the other matters raised in the letter, it is worth noting that the Council was not withdrawing or rescinding an offer of a school place as no unconditional offer had ever been provided for those wanting to attend either JGHS or, indeed, any other school in the city.
- 4.2 At the time of publishing the 'SMSP 2016' report, no places within any school across the city had been confirmed. The letter which was sent in November 2015 to the parents/carers of all P7 pupils clearly stated 'your child has been provisionally reserved a place' and 'schools will normally contact parents after the Easter break in April 2016 to confirm places for catchment'. At time of publishing the 'SMSP 2016' report the indication of a place was therefore still entirely provisional.