

From: Marjorie Toward
Sent: 07 November 2023 14:50
To: Councillor Michelle Welsh
Subject: School meal prices

Dear Councillor Welsh,

I write further to your response to my email dated 20th October in relation to the pre call-in discussion which took place on 16th October with Councillors Cottee and Barnfather, and the relevant Corporate and Service Directors, to discuss the questions and issues you had raised in relation to the decision on the price of school meals for schools who purchase the Council's meals service.

Thank you for setting out in your email the outstanding issues from the matters raised in your original pre call-in letter. I have now been able to give the outstanding points consideration to determine whether the residual issues meet the requirements set out in the Constitution for a Call-in to be considered by Overview Committee.

The first areas referenced in your email are compliance with the law and what is described as respect for human rights.

In relation to legal compliance, you have referred to the 2012 Local Authorities (Executive Arrangements) (Meetings and Access to information) Regulations 2012. This is also referenced in the notes from the meeting. The 2012 Regulations require a document to be published 28 clear days before a key decision is made. At our Council, and many others, that document is called the "Forward Plan". The Forward Plan therefore must state "the matter in respect of which the decision is to be taken" which in this case is the fixing of the pricing for school meals. The documents referred to in each Forward Plan entry do not themselves have to be made available or published 28 days in advance of a key decision being made.

The entry on the Forward Plan in relation to this decision references the report from the Interim Service Director to the Cabinet Member, Communities, as the relevant documentation for consideration. This report referred specifically in paragraphs 23 and 24 to the public sector equality duty and set out a summary of the relevant points which were discussed with and considered by the Cabinet Member in reaching a decision. These paragraphs also indicate that an Equality Impact Assessment had been completed. This matter is covered in some detail in the notes from the pre call-in discussion.

The paperwork provided shows that the Equality Impact Assessment was approved on 5th September and the decision made by the Cabinet Member on 7th September 2023. The decision was published on the delegated decision log on 11th September. I understand that the Equality Impact Assessment was not formally published on the relevant section of the Council's Public Website until October as there was a backlog in publishing Equality Impact Assessments which has now been cleared. However, the Equality Impact Assessment was available for inspection on request from 5th September and its existence and contents are clearly and transparently referenced in the decision making report. Furthermore the Cabinet Member and officers have provided a detailed account of how the equality impacts were considered by the Cabinet Member in some detail on more than one occasion before and when making the decision.

My understanding of the law and obligations under the public sector equality duty are that discussion and consideration is required of the potential equality impacts for those with protected characteristics, as defined by legislation, so that due regard can be had to those impacts in making a decision. I believe that most Councils use an Equality Impact Assessment or similar tool to facilitate and record this process but the completion of an Equality Impact Assessment Proforma it is not a specific legal requirement. Socio economic status or poverty, whilst important, are not protected characteristics under equalities legislation. In this case, these factors and the potential impact on vulnerable children if schools chose to pass the price increase onto parents were discussed and given

consideration by officers and the decision maker before a decision on the price increase to schools was made. The report and Equality Impact Assessment clearly identify that the cohort of most vulnerable children, namely those in receipt of free school meals, are not financially affected by the increase in prices to schools and are protected from this.

On the issue of human rights, the relevant law in the UK is the Human Rights Act 1998 under which there is no specific right to adequate food. Therefore I am not aware that any relevant human rights, as defined by statute, were engaged by this decision.

The next area referred to in your email is consultation and the taking of advice from officers. As you have identified, the Equality Impact Assessment on page 2 does reference the requirement for a detailed impact assessment and consultation. Whereas page 7 says that no consultation is required. It is my understanding from speaking to those concerned that officers and the Cabinet Member making the decision were clear that statutory consultation was not required in these circumstances. I am told that in order to be able to complete the proforma it is necessary to tick the box on page 2 saying that an Equality Impact Assessment and subsequent consultation is required. Managers have told me in ticking this box on page 2 of the Equality Impact Assessment they were referring to engagement and dialogue with schools. The approach is set out in the decision making report itself, including describing discussions with schools about actions to mitigate the impact of the price increase. I think the Equality Impact Assessment Proforma could have been clearer on this point but the report itself is clear and goes into some detail about the dialogue and engagement which took place over a significant period. I am happy to take forward the learning from this case to amend the proforma itself and provide further guidance to officers in completing such documentation in the future.

The information about Derbyshire County Council is provided and referred to as “context” to the decision the Cabinet Member was considering. I cannot see any reference to this being considered as a substitute for consultation. I would reiterate there is no statutory requirement for formal consultation in these circumstances as regards the actual decision made. The decision was in respect of the price charged to schools who purchase school meals from the Council as a discretionary traded service. The duty sits with schools to provide school meals not the Council. Schools are at liberty to choose how they provide school meals and how much they charge parents who are not in receipt of free school meals and could choose not to pass the costs onto parents in full or in part. Whilst the Council has engaged and had discussions with schools, there is no legal requirement to formally consult schools as customers of a traded service about the price for meals charged to schools. Families can choose whether to purchase meals from schools, or make alternative arrangements, and do not purchase meals directly from the Council.

Having considered all of the above information I am of view that these residual matters do not meet the requirements as set out in the Constitution for a Call-in to be considered by Overview Committee.

Regards,
Marje

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