

## PLYMOUTH CITY COUNCIL

**Subject:** Challenge to English GCSE Results 2012  
**Committee:** Cabinet  
**Date:** Tuesday 16 October 2012  
**Cabinet Member:** Councillor Williams, Cabinet member for Children and Young People  
**CMT Member:** Carole Burgoyne, Director for People  
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**Ref:**  
**Key Decision:** No  
**Part:** I

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### **Purpose of the report:**

To make Cabinet aware of the request from the Leaders of Leeds, Lewisham and Manchester City Councils to join a consortium to legally challenge the decisions of Ofqual and the examination boards Edexcel and AQA in respect of the June 2012 English GCSE results and recommend that Plymouth City Council also becomes a party to these proceedings.

Cabinet is asked to deal with this matter as an urgent decision because Counsel needs to know which Councils will be parties to the proceedings in order to be able to lodge the court papers with the Court. This needs to happen as soon as possible to be able to comply with the court time limits. Councillor Mrs Aspinall, Chair of the Overview and Scrutiny Management Board, has agreed that this may be treated as an urgent decision and will not, therefore, be subject to call in.

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### **Corporate Plan 2012 – 2015:**

This will assist in the Council's objective to raise aspiration.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

The financial implications of the challenge are that the Council would be liable to part fund the costs of Counsel representing the consortium in respect of the legal challenge and, even if we were successful, the whole of these costs would not be recoverable. The total likely Counsel costs for the consortium would be approximately £65,000 and the proportion attributable to the Council will depend on the final number of members of the consortium who become a party to the proceedings. Should the consortium fail in its challenge the likely total costs that would be incurred would be £420,000, the proportion attributable to the Council will again depend on the final number of members of the consortium who become a party to the proceedings.

At present nine Councils and two other authorities have agreed to become a party to these proceedings and two other parties have agreed to make a financial contribution to the costs of the consortium. The number of Councils supporting the legal challenge is likely to grow as thirty-six have already indicated their support but will be in the process of securing ratification of their intentions democratically. The potential liability therefore should decrease significantly. If the majority commit to the case then our financial

risk should be limited to around £2,000 to £4,000 if successful or £15,000 to £25,000 if unsuccessful which has been identified within the Council's budget.

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**Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

None

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**Recommendations & Reasons for recommended action:**

It is recommended that the Council agrees:

1. To become a party to the Judicial Review of the decisions of Ofqual, Edexcel and AQA in respect of the June 2012 English GCSE Results.
2. That the London Borough of Lewisham leads the legal action.
3. That the Head of Law of the London Borough of Lewisham will act on behalf of the Council in connection with this Judicial Review.
4. That the Council understands and accepts the costs and consequences of participating in these proceedings.

The main reason for the decision would be to enable young people to achieve the GSCE grade they are entitled to receive.

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**Alternative options considered and rejected and reasons for recommended action:**

1. To support the challenge by way of a financial contribution but not become a party.  
This would have the benefit of certainty in respect of the Council's costs in respect of the matter; but would run the risk that children in Plymouth may not benefit from the result of any court decision if, for legal reasons, the decision is limited to children from the authorities who are party to the proceedings.
2. To not support the challenge.

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**Background papers:**

None

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**Sign off:**

Fin People FEC12 13 007		Leg LT 15690		HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											
Have you consulted the Cabinet Member(s) named on the report? Yes / No											

## Background

- 1.1 Once GCSE English results were published in August it became clear that a large number of students (between 100 – 200 in Plymouth) did not achieve the grades that they had been predicted to achieve. Research revealed that the grade boundary between 'C' and 'D' had been increased from where it had been set for the exams taken in the same subject in January. The exam had become harder to pass. The reasons given concern preventing 'grade inflation' – standards would have risen if the pass mark hadn't been adjusted. The issue is that the same cohort of pupils had been treated unfairly with a number of students being deprived of pathways into apprenticeships, training or courses of further study.
- 1.2 In Wales, the education minister, Leighton Andrews, ordered the WJEC exam board to re grade Welsh students' English papers. As a result, last month nearly 2,400 pupils who took English with the exam board received better results, after a review of the marking system. Pupils in England taking the same exam have been awarded lower grades.

## The Proposed Legal Challenge

- 1.3 In order to challenge this position a number of local authorities are collaborating to challenge the examinations regulator Ofqual and two GCSE English examination providers Edexcel and AQA. Lewisham Council has contracted a specialist QC to advise on the possibility and viability of legal action including a judicial review. The advice from Counsel is that the action is likely to succeed in a decision that the decisions by Edexcel, AQA and Ofqual in respect of changes to the grade boundaries for the English exam in June 2012 were unlawful. It would be hoped this would lead to political pressure to affect other exams and boards affected as the same practice occurred to limit improvements in other subjects including maths.
- 1.4 Leeds, Lewisham and Manchester are intending to challenge all three bodies and in total nine Councils and 2 other organisations are going to be named as parties. Two others have made financial contributions.
- 1.5 The unprecedented legal action will be submitted later this week. It is being brought by an alliance of pupils, schools, councils and professional bodies, who want the students regraded after the boundary for a grade C in GCSE English was raised between January and June. The aim is to have a decision by Christmas – subject to the Court agreeing to deal with the issues on an urgent basis.
- 1.6 Ofqual, AQA and Edexcel are "rigorously defending" their existing position. Their view is that they do not need to do anything as the students who have been affected can re-sit the examinations in November. However there is particular concern amongst Head teachers that it is difficult to prepare pupils for any re-sits because there is a lack of clarity as to what standard is required to be achieved for students to now achieve a C grade. In addition re-sits do not help those students where universities and employers make decisions based on their initial results or those schools whose positions in league table will be affected by the June results.
- 1.7 The Deputy Leader of Leeds City Council, Councillor Judith Blake, together with the Mayor of Lewisham, Sir Steve Bullock and the Leader of Manchester City Council, Sir Richard Leese have written to all council leaders across the country to urge engagement in a full legal action leading to a judicial review.
- 1.8 Lewisham have asked, for those LA's who agree to join the action, that they each agree to be named as individual claimants as part of the joint action. This they feel will add strength to the action in that, it is hoped, significant numbers of LA's in England will be named.
- 1.9 The Council has the option to do nothing – ignore the injustice and let others fight on behalf of the city's young people who received unfair treatment by the examination providers. Benefits include no financial outlay or risk and 'business as usual' for officers. Risks include alienating young people and

professionals in schools by not doing what we can to correct a flawed process to enable young people to achieve the GCSE grade they are entitled to receive.

- 1.10 The other options are to join the consortium – challenge the unfairness through the courts and demonstrate the effectiveness of collaboration, the rule of law and a just cause. Risks include financial loss and potential negative publicity. Or there is an option to make a financial contribution to the consortium but not become a full party to the case and run the risk of achieving a result that is limited to the children in Councils who were prepared to become a party to the legal proceedings.