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Date: 12/07/2023

Dear Member

COUNTY COUNCIL - THURSDAY, 13 JULY 2023

I am now able to enclose, for consideration at the County Council meeting being held on Thursday 13 July 2023, the following reports that were unavailable when the agenda was first published.

Agenda Item No

11 **Proportionality (Pages 1 - 2)**

13 **Monitoring Officer's Section 5 Report - UASC (Pages 3 - 6)**
Urgent Item – Added with permission of the Chairman of the Council

Yours sincerely

Benjamin Watts
General Counsel

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By: Benjamin Watts - General Counsel

To: County Council – 13 July 2023

Subject: Proportionality Update

Classification: Unrestricted

Recommendation:

The County Council is asked to:

(a) **NOTE** the outcome of the recent by-election and that no changes are required under the proportionality rules.

(b) **CONFIRM** the continued delegated authority to the Democratic Services Manager, in consultation with the Group leaders to adjust the allocation of committee places in order to conform to overall proportionality requirements and manage membership arrangements in line with the details set out in this report and that considered by Council 0n 25 May 2023.

For Noting

Recent By-Election

1. A by-election was held for the Maidstone Central Division on 6 July 2023. The Liberal Democrats held the seat, resulting in no change to overall representation figures on the Council.

Proportionality – substantive review requirement not triggered

2. Where substantive changes to the number of seats held by different groups arise as the result of normal elections or by-elections, the application of the proportionality arrangements is required. Following the latest by-election, the updated position does not have a material impact on the proportionality arrangements.

3. Council considered proportionality and Committee appointments at its AGM on 25 May 2023 and as the recent by-election does not substantively change the entitlement to seats, the requirement to review proportionality and seat allocations in line with the Local Government and Housing Act 1989.

4. Any optional changes to allocations or alternations to Committee sizes may be explored through discussion between the Group Leaders and would be brought subsequently to Full Council for formal consideration at a future meeting.

Recommendations

The County Council is asked to:

(a) **NOTE** the outcome of the recent by-election and that no changes are required under the proportionality rules.

(a) **CONFIRM** the continued delegated authority to the Democratic Services Manager, in consultation with the Group leaders, to adjust the allocation of committee places in order to conform to overall proportionality requirements and manage membership arrangements in line with the details set out in this report and that considered by Council 0n 25 May 2023.

Background documents

- Proportionality and Appointments to Outside Bodies report to County Council – 25 May 2023.

Joel Cook
Democratic Services Manager
03000 416892

By: Ben Watts, General Counsel (Monitoring Officer)

To: All Elected Members

Subject: Report

Date: County Council – 13th July 2023

Classification: Unrestricted

Summary: This report is made under section 5 of the Local Government and Housing Act 1989 relating to a breach of statutory duties by Kent County Council.

Introduction

1. In my capacity as Monitoring Officer, I have previously advised Members regarding the challenges that the Council faces in meeting its statutory duties given the number of unaccompanied asylum-seeking children (UASC) arriving on the Kent coast. This has been the subject of two prior Section 5 reports and inclusion in the Annual Governance Statement given the incompatibility of competing statutory duties with national and international issues manifesting themselves in Kent.

2. Kent County Council has a range of statutory duties in relation to vulnerable children. The majority of these are arranged within the Children Act 1989 and include dozens of separate duties that the Council is required to discharge regarding vulnerable children. It is important to note that these duties are all mandatory and the responsibilities under the legislation are non-delegable.

3. I have previously advised that Section 20 of the Children Act is a key duty to provide accommodation for children in need within the Kent County Council administrative area. This means that where children are lost, abandoned or have no appropriate carer/person with parental responsibility that the Council must step in.

4. I have also previously advised that the statutory Director of Children's Services (DCS) (then Matt Dunkley, now Sarah Hammond) has concluded that the competing interests of different sets of statutory duties, including duties to the young people (citizen and UASC) that are already within the Council's care, means that the Council would inevitably fall outside at least one of the duties if it was to try and take into its care every UASC who arrives in Kent. In simple terms, they say that the Council cannot safely and adequately look after all the children arriving in Kent in periods where the number and rate of arrivals is greater than the capacity that the Council can provide in its children's services.

5. In recent years, the DCS with support from the executive has sought to put pressure on Government to meaningfully implement the arrangements of a mandatory National Transfer Scheme (NTS). This has meant that some of the children arriving at the port have been transferred to other local authorities for

care. The DCS had put in place arrangements where necessary to seek to safeguard the children until the NTS organised for a child to be placed with another local authority.

6. It has become apparent that the scheme is not working as effectively as it should and the numbers of children being transferred and the speed with which those transfers are taking place is insufficient to keep up with the rate of new UASC arrivals. Accordingly, the Council says the Secretary of State for the Home Department (SSHD) should take urgent and immediate steps to comply with the timeframe and the detail of the protocol underpinning her scheme. At times, the SSHD has accommodated UASC in hotels, in Kent and other areas, that are not within the care of local authorities.

7. Kent County Council is currently involved in three separate Judicial Review claims in relation to the care of UASC and their accommodation in hotels by the SSHD:

    a. a claim brought by a charity named ECPAT, with both KCC and the SSHD named as Defendants. ECPAT challenges the lawfulness of:
        i. the accommodation of UASC in hotels by the SSHD;
        ii. KCC's failure to take into its care and provide services required by the Children Act

    b. a claim brought by Brighton & Hove City Council, which, in substance, challenges the SSHD's decision to stand up a hotel in Hove – the Langfords Hotel – for the accommodation of UASC. KCC is named as an Interested Party in those proceedings; and

    c. proceedings brought against the SSHD by KCC as Claimant, to challenge:

        i. the SSHD's failure to operate an effective NTS;
        ii. non-compliance by the SSHD with the terms of the current NTS; and
        iii. the decision by the SSHD to accommodate UASC in hotels in areas, such as Kent, where the applicable local authority is already caring for numbers of UASC above its 0.1% quota.

8. The Council has always been clear through the executive and the DCS that returning to a position of compliance with all of our statutory duties remains a priority and when the number and rate of arrivals allow this, it is achieved. Any non-compliance must be viewed as regrettable, hence the previous and current reports. However, our evidence is that the statutory NTS needs to work effectively, efficiently and on a timely basis if KCC is to be able to meet those duties in relation to every arriving child without services being overwhelmed and becoming unsafe.

9. Through the evidence of the DCS in the Court Proceedings mentioned above, the Council will seek to explain the reality of operations at the border and the steps taken to seek to safeguard these vulnerable young people, which remains her focus. The Immigration Act 2016 (which brought about the mechanism for Government to mandate the transfer of children arriving at the border to other

authorities) was introduced, in part, to ameliorate some of the challenges faced in 2015 and for KCC's part to respond to the challenges faced by Kent in relation to providing statutory services under the Children Act.

10. The above claims have been ordered to be heard together and are listed for an urgent preliminary issues Hearing on 20th and 21st July 2023 at the High Court. I will provide Members with a further update on receipt of the judgment.

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Background Information: none

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