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Date: 10 July 2024

Dear Member

CABINET - THURSDAY, 11 JULY 2024

Please find enclosed the report for Item 6 of the 11 July 2024 Cabinet meeting, which was unavailable when previous papers were published.

Agenda Item No

6 **Unaccompanied Asylum-Seeking Children Update** (Pages 1 - 6)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Watts', is written over a faint circular stamp.

Benjamin Watts
General Counsel

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From: Roger Gough, Leader of the Council
Sue Chandler, Cabinet Member for Integrated Children's Services
Amanda Beer, Chief Executive
Ben Watts, General Counsel

To: Cabinet – 11th July 2024

Subject: UASC Update

Status: Unrestricted

1. Introduction

- a) This report provides Members with an update on the current operational and legal position regarding the arrival of unaccompanied asylum-seeking children in Kent (UASC).
- b) Members have previously received several reports on this subject, including four reports issued by the Monitoring Officer from 2020 onwards under section 5 of the Local Government and Housing Act regarding the Council's statutory compliance with the Children Act and associated legislation.
- c) In the previous Section 5 Reports, KCC's duties towards all UASC who arrive in Kent have been summarised, including the need to provide accommodation under section 20 of the Children Act 1989. Where a child in need is accommodated by KCC under section 20, they also become a 'looked after child' ("**LAC**") for whom KCC has corporate parenting responsibilities. KCC therefore assumes further duties under the legislation, including to safeguard and promote the welfare of LAC.
- d) Members will also be aware that the Council issued litigation in 2023 by way of a Judicial Review against the then Government. This followed unresolved concerns about the National Transfer Scheme (NTS) operated by the Home Secretary and the impossibility of the position that the Council was placed in attempting to comply with statutory duties owed to arriving and resident Children in need of care.
- e) Since July 2023, Members will be aware of the steps that have had to be taken by the Council to do everything possible to accommodate arriving UASC. Members and staff across the Council continue to work with the social work teams within the CYPE directorate to meet the continued pressures being placed

on the service as they do everything possible to meet statutory duties and support the vulnerable young people arriving in our County.

- f) In addition to the work at the port of Dover and by dedicated social work teams, the development of extra capacity has also been undertaken. Funded by central government and required by the Court, the Council has worked at pace to deliver extra capacity across the County with the first additional reception centre buildings opening in the coming weeks.
- g) Accordingly, this report provides Members with an update on the current operational and legal position regarding the arrival of UASC and the steps being taken by the Council amidst continuing national and international issues beyond our control.
- h) The Children Act 1989 did not envisage a small number of local authorities becoming responsible for vast numbers of children who spontaneously arrive in the United Kingdom, and who have no familial or any other connections to their areas (or indeed the United Kingdom). Changes in global migration patterns and trends over the last decade have, however, made that scenario a reality.
- i) As a result, KCC in particular (together with a small number of other 'gateway authorities') is now effectively having to operate migrant reception services for UAS children on behalf of the whole country, under the guise of its Children Act functions which should be focussed above all on the best interests and welfare of vulnerable children. The High Court has recently provided confirmation, if it was needed, that local authorities' duties under the 1989 Act apply to all children in need, irrespective of their immigration status and/or the resources actually available to provide the services required by UASC.
- j) The previous Government attempted to resolve this issue in two statutory interventions:
 - a. the Immigration Act 2016; and
 - b. the Illegal Migration Act 2023
- k) Both of these alongside the NTS have either not been implemented or have proven unsatisfactory in ensuring the equitable and safe distribution of these young people across the whole country.
- l) The Council has consistently said that the legislation and the response, which in some cases is 35 years old, is not suitable to deal with the current operational position.
- m) The Council has always been clear that at the heart of the operational and legal challenges faced by our organisation are the lives and wellbeing of vulnerable children either arriving in Kent or already ordinarily resident here. The County faces pressures unparalleled across local government in this space and a fully and fairly operating NTS remains an urgent requirement.

- n) The operation of the NTS has improved during and since the litigation brought by the Council but it is still insufficient. The Council continues to have to operate on the brink of unlawfulness as transfers under the scheme are made just in time. However, that is not a sustainable position for the proper operation of children's services in Kent or for the benefit of all the young people coming into and through our care.

2. Outcome of the Litigation

- a) After a number of hearings over the past year, the final judgment in the High Court proceedings we brought against the Government (which was joined with a claim brought against KCC and Government by a charity called Every Child Protected Against Trafficking) was handed down on 5 June 2024.
- b) This was more than ten months after the initial judgment, which confirmed that in not taking every UAS child into our care, the Council had been acting unlawfully. However, this was not only acknowledged in our Court paperwork, it was a position that KCC had publicly and transparently confirmed through statements, reports and the issuing of section 5 reports as far back as 2020.
- c) The original judgment also required the Home Secretary to make arrangements that would allow for the closure of hotels used for arriving UASC who they had been unable to transfer under the NTS. The original judgment clarified that KCC could not refuse to discharge duties even when we had exceeded a capacity that was felt to be safe, thereby placing other statutory duties at risk of breach. Importantly, the initial judgment recognised for the first time, the range of options open to the Secretaries of State for the Home Department and Education had to ensure that UASC were looked after.
- d) Having acknowledged it previously and publicly, we did not contest the fact we were not complying with our duties. For a number of years, the Council had been seeking to get the NTS to work in order that the entire national burden for these arriving vulnerable children did not fall to one authority in one geographic corner of the country which inevitably would only have so much capacity.
- e) The judgment was clear that the Council and the Home Office had to do everything possible to get the Council back to a position of lawfulness. Following discussions and funding from the Home Office for this explicit purpose, the Council has developed additional capacity at pace which is coming online over the course of the summer.
- f) In the hearings since the initial judgment, KCC has been impressing the need for a fully and fairly operating NTS and for greater involvement and action by government departments. The Council reminded the Court that whilst the Children Act placed duties on local authorities, there were not equivalent powers that allowed one authority such as Kent to do all the things necessary to meet them, which had been why we sought to challenge the Secretary of State. We regularly asserted that the local authority was not a peer to central

government and that we had very few of the levers open to those in Westminster.

- g) Similarly, the Council explained to the Court the impact on Kent residents of the absence of a fair and functioning NTS. As the litigation developed, the Council explained to the Court and Government the need to avoid a situation where Kent taxpayers were required to fund local solutions to national problems. Pleasingly, as the litigation proceeded, a package of funding and increased investment to support the necessary steps required by the Court was secured for KCC.
- h) Importantly, the final judgment recognised the role of the Government in placing KCC in that position of unlawfulness and their responsibilities in helping us to get out of it. The judgment is clear that there must be action required by the Home Secretary **before** Kent gets to the position where it is unable to discharge its duties.
- i) The litigation has resulted in a number of major outcomes for the Council:
 - i. Significant Capital Funding to enable KCC to increase capacity without that financial burden being met by Kent taxpayers
 - ii. Confirmation from the Court that the Government is expected to support Kent before we find ourselves in breach of duty
 - iii. Confirmation that the Government should design an NTS that ensures Kent are able to meet our statutory duties
 - iv. Requirement for Government to work with us on processes and steps to provide an early warning system and meaningful action from them once it is triggered
 - v. The High Court found the Home Secretary to have acted unlawfully in his decision-making regarding the NTS, which failed to transfer UAS children promptly to other local authorities. The court ordered him to prepare a plan for the NTS that estimates, models and ensures the required number and speed of transfers.
 - vi. The Court agreed with our calculation of the time periods under the NTS meaning that the timetable for transfer starts upon that young person's arrival into the County not at some later date

3. Current Operating Position

- a) The number of children arriving into the United Kingdom along Kent's coastline continues to place a significant pressure on our Children's services with the number of UAS children arriving in Kent so far in 2024 having been higher than that in 2023. In the first six months of 2023, 624 UASC were referred to KCC as opposed to 1,165 in the same period this year.
- b) Despite the high number of children arriving, between January 2024 and now, KCC accommodated and looked after every UAS child, in many cases pending their transfer to other local authorities via the NTS. In part, this has been due to an 'early warning system' ("**EWS**") and 'emergency response plan' ("**ERP**") implemented between KCC and Central Government, which contained actions

that should be taken when certain ‘trigger points’ are met. The highest trigger point in the EWS – “**Trigger Point 4**” – applies when capacity in the Permitted Placement options which KCC has ring-fenced for accommodating UAS children is likely to be exhausted within the next 72 hours, and KCC does not consider it will be able to spot purchase enough Permitted Placements from the private sector (including in other local authority areas) within that timeframe to accommodate all UAS children who will require accommodation.

- c) Officers first notified Central Government that Trigger Point 4 was met in relation to one or more demographic categories (e.g. under 16 year old children, boys aged 16-17 etc) on 29 March 2024. Between that date and now, Trigger Point 4 was met in relation to one or more demographic categories on a number of other occasions. On each occasion, however, action was taken by KCC and Central Government to ensure that the transfer of UAS children already accommodated by KCC was completed via the NTS with sufficient throughput to narrowly ensure that all newly arrived UAS children could be accommodated in Permitted Placements.
- d) KCC continues to request help and assistance from Directors of Children’s Services at other local authorities, under section 27 of the Children Act 1989, to find any available placements, accommodation or other social worker and human resource that could be provided outside of the NTS.
- e) KCC also continues to develop its ring-fenced placement capacity by developing reception centre accommodation, block booked foster carers and block booked supported accommodation. The Council is also continuing to undertake extensive searches of the external market to identify potential placements for UAS children ahead of referrals.
- f) Accordingly, whilst the numbers being taken through the NTS have improved, and therefore the anticipated crisis in provision for UASC has not yet materialised, KCC continues to take a disproportionate share and urgent issues remain for resolution that present continuing operational and legal risk to the Council. It has been the Council’s contention that structural changes in the operation of the NTS, rather than short-term if so far effective crisis management measures are needed to ensure that KCC can consistently meet its legal duties even in times of large numbers of arrivals.
- g) It is also the case that this has been achieved by the narrowest of margins at some points and the Council will continue to seek improvements from Government to the NTS alongside the implementation of other steps and the use of powers open to them to reduce the impact on the County to sustainable levels.
- h) The Home Secretary has a power to accommodate UAS children in hotels, outside of the CA89 scheme, in true emergency situations. The court also declared that they have powers under the Illegal Migration Act 2023 to accommodate UAS children, if they bring them into force.

4. Next Steps

- a) The tension that KCC faces between its statutory duties persists. Social workers continue to have to balance different responsibilities as they take UAS children into care as LAC and to safeguard their welfare, as the high number of arrivals exceeds KCC's capacity and resources.
- b) Following the General Election last week and appointment of Rt Hon Yvette Cooper MP as Home Secretary, the Leader is writing to her and the new Secretary of State for Education to invite them to Kent to see the great work being done by KCC's officers and staff to safeguard the welfare of UAS children, as well as the real challenges faced in doing so.
- c) KCC has for far too long been expected to shoulder a large and disproportionate burden by itself, to accommodate and care for every UAS child (even on a temporary basis). This has meant that KCC has effectively been required to find solutions for a national problem, dictated by global migration patterns, within the very limited resources and tools available to a local authority.
- d) There is a clear opportunity to now make positive and long-lasting changes and it is the Executive's desire that Government engages properly so that this is done outside of the court processes that we have had to resort to most recently.

5. Recommendations

Cabinet is asked to:

- a) NOTE and COMMENT on the report

6. Background Documents

None.

7. Report Author and Relevant Director

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