

## KENT COUNTY COUNCIL

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### SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Council Chamber - Sessions House on Tuesday, 9 July 2019.

PRESENT: Mr A Booth (Chairman), Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour, Mr P V Barrington-King, Mrs R Binks, Mr R H Bird, Mr D L Brazier (Substitute for Mrs P M Beresford), Mr G Cooke, Mr D Farrell, Mr R C Love, OBE, Dr L Sullivan and Mr J Wright

ALSO PRESENT: Mrs M E Crabtree, Mr M C Dance, Mr R W Gough and Mr M E Whybrow

IN ATTENDANCE: Mr K Abbott (Director of Education Planning and Access), Mr M Dunkley CBE (Corporate Director for Children Young People and Education), Mr S Pleace (Revenue and Tax Strategy Manager), Mr M Riley (Economic Development Officer (Expansion East Kent Programme)), Mr D Shipton (Head of Finance - Planning, Policy & Strategy - and Acting Section 151 Officer), Mr D Smith (Director of Economic Development) and Mrs A Taylor (Scrutiny Research Officer)

### UNRESTRICTED ITEMS

#### **1. Apologies and Substitutes**

*(Item A2)*

1. Apologies had been received from Mrs Beresford, Mr Brazier was substituting and Mr Roy, Parent Governor.

#### **2. Minutes of the meeting held on 8 May 2019**

*(Item A4)*

RESOLVED that the minutes of the meeting held on 8 May 2019 were a correct record and that they be signed by the Chairman.

#### **3. 10.00 - 11.30\* Potential impact on KCC and School Finances of High Needs Budget Overspend and Deficit Recovery Plan**

*(Item C1)*

1. Mr Gough introduced this item; this was a long running issue of considerable significance for this Council and many others and was also a growing national issue. Mr Gough considered that what had ultimately driven this pressure on the High Needs budget was the impact of the 2014 reforms and a major increase in demand, one indicator of which being the increase in demand for Education Health and Care Plans (EHCPs). The Council was delivering everything in terms of special school expansion set out within the Special Educational Needs & Disability (SEND) strategy, however the full consequences of the 2014 reforms were not anticipated.

2. KCC had raised this issue with Kent MPs, and with Ministers, to consider how best to address this national problem.

3. It was considered that there were three areas which would help to address this problem:

- a. Continuing to make local transfers of funding into the High Needs Budget;
- b. Improving KCC's activity and gatekeeping; and
- c. National policy changes – it was this area which was most important and the only way through which the problem could be addressed.

4. The relationship between this issue and the Council was ambiguous, the Dedicated Schools Grant (DSG) reserves were ultimately the reserves of the school system; however the Council had High Needs Funding responsibilities, the nature of the risk was a complex area.

5. Mrs Crabtree explained that the pressure on the High Needs Budget since the 2014 Children's and Families Act and the accompanying SEND Code of Practice 2015 was extremely worrying. Government funding was not sufficient, the ability to transfer money between the different DSG blocks was limited and was becoming more challenging. £14million in year overspend on High Needs was based on a continued trajectory of growth. Mrs Crabtree explained that the underlying pressure against permanent recurring funding was much greater at £26.5million.

6. Mrs Crabtree also referred to the increased pressure on the SEND Home to School Transport budget which was funded from the Council's base budget. Over the 4 year period the budget had increased from £24million in 16/17 to £32million in 19/20 this was due to an increase in inflation and demand pressures.

7. Simon Preece gave a presentation which is [available here](#).

8. Matt Dunkley explained that this was a problem affecting a large number of local authorities, 33 of which were required to produce a deficit recovery plan at the end of 2018/19. Many authorities did not have a plan because they were unable to balance the deficit, there was no feasible way to balance it. It was considered that additional money on its own would not solve the problem, the system needed to be reformed. A short term injection of funding was needed to ensure Councils did not breach their statutory obligations, however incentives within the system needed to be addressed.

9. Mr Gough and Matt Dunkley had met with Nadhim Zahawi MP, there were concerns that the Government was treating the symptoms not the causes and it was essential to treat the causes.

10. Dave Shipton confirmed that at a recent meeting the County Councils present stated that they would not be able to submit both aspects of the recovery plan, bringing overspend in-line with annual funding and repaying the deficit.

11. Referring to Diagram 1 on page 12 of the agenda pack a Member asked what the figures would look like if KCC used the same internal formula as used prior to the national changes in 2013/14. Simon Preece explained that the High Needs Block funded a variety of things, including a number of institutions, alternative provision and some central SEND services. The Government required Councils to move from a

system which only provided additional funding for those children with a statement of 25 hours or more to a threshold of more than £6,000 being the cost of intervention & support for individual pupils. Where the cost exceeded £6,000 the local authority had a responsibility to provide top up funding.

12. Mr Gough explained that as well as the move from hours to the £6,000 threshold there was also the national formula on high needs, which capped KCC. The Council was not saying that more money was not required but the Council was saying that money alone would not solve the problem. The Children's Minister's promise to raise this issue during the spending review was welcomed, however structural changes were also needed.

13. A Member commented that both the National Funding Formula and the High Needs Block were fundamentally flawed and that was to the detriment of Kent.

14. A Member asked why Kent had spent more and were we comparing like for like? Simon Pleace explained that the provision of SEND differed across the Country, other Counties might not have the same number of maintained special schools and they might not have Further Education colleges. Most importantly, there had not been a reduction in High Needs funding, from the introduction of the historic spending factor within the National Funding Formula for High Needs.

15. A Member asked why KCC had received only £3.5m of the additional £125m High Needs Block allocation, this was considered to be disappointing. Simon Pleace explained that in Education KCC usually received around 2% of the national allocation, the basis of the £125 million was pupil population.

16. Referring to Home to School transport and SEND, a Member commented that there was a need to be realistic about the costs of this. Keith Abbott explained that over past few years KCC had tried various options, including retendering and moving to contracts centred on individual schools where appropriate.

17. Kristian Garsed, Parent Governor Representative asked whether the policy decided by KCC was not to top up DSG funding, was there any scope for that to be revisited. David Shipton confirmed that this was the case but this was the policy for all specific grants, it would be possible for KCC to choose to top up the DSG but this would have to be carefully looked alongside all grants. Simon Pleace confirmed that some authorities did chose to top up the DSG but these authorities were the minority.

18. A Member asked how many young people in Kent were left undiagnosed? Of those with an EHCP was there an even spread across the deprivation line? Matt Dunkley explained that Kent had a larger proportion of children with EHCPs than its statistical neighbours, this did not suggest an under provision of EHCPs in Kent. Matt Dunkley considered that the switch to EHCPs, combined with other factors had led to a medicalisation of special needs, the diagnosis created a label and the label created funding. In the past, for non-severe needs, there would have been a conversation with their school to determine how the child could be best supported. Evidence suggested that Kent had 2.5 times the national average of children with Autism, but Kent had the national rate of adults with Autism. There was a difference in the rates of diagnosis across Kent. It was considered that the issue was not that Kent had too few children with EHCPs, but, compared to 10 years ago Kent had too

many with an EHCP where the more realistic expectation for those children was that they would be supported within the school's resources.

19. Mr Gough confirmed that High Needs Funding and the schools' financial position were clearly interrelated. It was possible to have an EHCP without getting access to Higher Needs Funding (HNF) (within £6,000) and in Kent it was possible to get HNF without having an EHCP. But this had not reduced the demand for EHCPs. The ultimate driver for the High Needs budget was the shift away from mainstream schools, towards special schools and then towards independent special schools. EHCP was a good proxy indicator.

20. A Member commented on the number of children in Kent with special needs, she asked how often EHCPs were reviewed? Were the figures replicated internationally? The Member also asked whether parent preference should be limited? Mr Gough explained that 3.1% of the cohort had an EHCP, this was a big increase and was above the national average but the national figures were also rising. Referring to parental preference and efficient use of public funds it was necessary to ensure that the balance was right and this was not currently considered to be the case. Mr Dunkley explained that EHCPs were reviewed annually under legislation, however this very rarely resulted in less support and funding. Regarding international comparisons Kent's mainstream primary schools were generally very inclusive but the divide came at the transition into secondary and this differed to many European secondary schools.

21. The Chairman expressed his disappointment that the Church Representatives were not present at the meeting because this was a valuable item and the representatives could potentially have brought some useful information.

22. A Member commented on the differences in the statistics for Kent compared to its statistical neighbours, and the proportion of young people qualifying for additional funding. Mr Dunkley explained that 10 yrs ago the single biggest identified need for additional funding was Dyslexia, this was now not the case and this was not because there were no dyslexic children but because changes to the curriculum had eradicated the need for dyslexic children to go to special schools. Referring to Autism Spectrum Disorder (ASD) children were now being placed into special schools who previously would have been supported in mainstream schools. It was necessary to look at all resources available in Special Resource Provision, to refocus on mainstream schools to help them to be more inclusive. Mr Gough explained that this was a demand led activity,  $\frac{3}{4}$  of EHCP applications came directly from parents, not through schools.

23. In response to a question about the role of academies in supporting children with high needs, Mr Dunkley explained that schools with their own admissions arrangements were allowed to decide which children attended their schools and this could disadvantage high needs students.

24. Members discussed the powers of KCC, Mr Dunkley confirmed that KCC had a lot of statutory responsibility and limited statutory power. Tribunals were placing students in expensive independent non maintained schools and KCC had no control over this.

25. Referring to travel a Member commented that there was not proper spread of special schools. There were also comments about the dangers of putting high needs children into non-mainstream schools and concerns about the social problems this built up within society.

26. In response to a question about ways to convince parents that a mainstream school was a good school for their child, Mr Gough explained that steps were being taken in the right direction, there was a distinct shift of focus in the Ofsted framework. Therefore the incentive structure for schools should refocus. KCC had a large number of maintained special schools and a lot of investment had been made, the key point was about parental confidence. Mr Dunkley had concerns that the current Ofsted framework, though an improvement, would not adequately address the issues. It was important to include in Tribunals consideration of the efficient use of resources available to the local authority.

27. There were questions over the need for independent non maintained special schools?

28. Mr Garsed, the Parent Governor Representative commented that the problem partly was with the £6,000 threshold for which there was no High Needs Funding, therefore this pushed more children into specialist provision and disincentivised the mainstream from taking children. Mr Dunkley agreed with this, the DfE had confirmed that it would review the first £6,000 threshold but without a root and branch form of funding the perverse incentives were likely to continue.

29. Members discussed concerns around the Hadlow Group FE establishments, officers were asked for their view on any contingency plans to deal with future problems in case the position doesn't improve. Mr Abbott explained that the Group had confirmed that provision from September would be safeguarded. There was due to be a meeting shortly with interim management to discuss the future with longer timescales to enable reassurance about existing and future students.

30. A Member referred to the top bullet point on page 28 of the agenda, 'scrutinising the decision to place children in Independent Non-Maintained Special School' was it possible to do this? Mr Abbott confirmed that Kent was going to try this and put in some challenge.

31. The Chairman referred to the last three bullet points of 5.7 on page 28 of the agenda and considered that this should be reviewed at a later stage.

32. Members discussed the merit of sending a copy of the Scrutiny Committee paper to the Secretary of State, Minister with a copy to Kent MPs with the full support and endorsement of the Scrutiny Committee, The Cabinet Member and Director had no objection to this at the appropriate time.

33. Members complemented Simon Pleace on his excellent paper and presentation which had served the Scrutiny Committee well.

34. The Chairman acknowledged the incredible pressure that Mr Gough, Mrs Crabtree and their teams were under. He thanked all the guests, including Mr Garsed for attending the meeting and answering Members' questions and contributions.

RESOLVED that the Scrutiny Committee note the report and actions already undertaken as set out in section 5 of the paper.

#### **4. MOTION TO EXCLUDE THE PRESS AND PUBLIC FOR EXEMPT BUSINESS** *(Item C2)*

RESOLVED that, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 3, 5 and 6 of Part 1 of Schedule 12A of the Act.

***“Information relating to the financial or business affairs of any particular person (including the authority holding that information), unless it is required that the information be registered under the Companies, Friendly Societies, Industrial and Provident Societies, Building Societies or Charities Acts.”***

***“Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.***

***“Information which reveals that the authority proposes:***

***(i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or***

***(ii) to make an order or direction under any enactment.”***

#### **5. 11.30 - 13.00\* Regional Growth Fund Investments** *(Item C3)*

1. The Cabinet Member briefly introduced this item which had been considered previously by the Scrutiny Committee, in 2013, twice in 2014 and in 2015.

2. The two Members who had requested that this item be placed onto the agenda of the Committee explained their reasons behind this request. The Members expressed their concerns about particular types of loans and investments and welcomed assurances that lessons had been taken on board.

3. Members and Officers discussed the issues surrounding this RGF Investment, officers confirmed that lessons had been learned and had been incorporated into current guidance.

RESOLVED that the Scrutiny Committee notes the contents of the report and the additional information contained at Appendix One.