

**Item 8 – Report is made under section 5 of the Local Government and Housing Act relating to a breach of statutory duties by Kent County Council.**

**Supplementary information**

**Appendix 1**

**Email from Mr R Gough, Leader of the Council to all members dated 10 June 2021**

Dear Colleagues

As you will have seen, Ben Watts has sent out a notification to all Members that it is with deep regret we have notified government that from Monday we will not be able to accept newly arrived unaccompanied asylum seeking children (UASC) into our care. Sue Chandler and I have considered extensive detailed advice, and are assured of our view that we cannot safely provide these young people arriving on Kent's shores with the care that they need; neither can we continue to safely support those young people who are already in our care unless we take these steps.

Members will recall - especially those who served in the previous council – that we were faced with this untenable position last August. When we resumed our duties in December, both Sue and I made it very clear that we would carefully monitor the situation and that unless the underlying issues were addressed we were at grave risk of having to suspend our duties once more. It is important to note in this context that during those 3 months when we did not accept new arrivals, the Home Office successfully placed all new UASC arrivals in Dover directly with other local authorities, who were not under the same pressure, and they were safely and properly looked after. It is our expectation that the same will be the case after Monday, and we have been working closely with the Home Office to help them achieve that. This year arrivals of UASC have accelerated at pace, and so far we are already at over 400 compared with 231, the government's recommended maximum number of under 18-year-old UASC. The numbers are continuing to increase rapidly on a daily basis and as Matt Dunkley's advice note (attached) clearly sets out, this means that the associated risks are increasing sharply.

We are deeply disappointed that the government's new version of the National Transfer Scheme (NTS), launched today, still fails to deploy the powers that the Home Secretary has under the 2016 Immigration Act to make the NTS mandatory for local authorities. The harsh experience of recent years is that a voluntary system does not work. We therefore believe that a mandated NTS is the only way to relieve this crisis on a sustained basis.

## Appendix 2

### **Email from Matt Dunkley, Corporate Director for Children, Young People and Education, to Mr Gough, Leader of the Council and Mrs Chandler, Cabinet Member for Integrated Children's Services)**

Dear Roger and Sue,

Further to our meeting this afternoon, I am writing to confirm the advice I gave you at that meeting .

It is with anger and sadness that I must I advise that I believe we will, once again, and almost certainly by Monday 14<sup>th</sup> June 2021, be rendered unable to safely discharge our statutory duty to receive into our care unaccompanied minors arriving at the port of Dover , claiming asylum and referred to us by Borderforce. Having been in this position once before last year, it is immensely frustrating to have to be giving you the same advice again, with all that it entails and means.

The statutory duty to any unaccompanied minor arriving at the port under the 1989 Children Act must be balanced with my Statutory Duties under the 2004 children Act as DCS, and Sue's as Lead Member. Whilst the former gives KCC the duty to receive into care any unaccompanied child arriving and claiming asylum at ports in Kent, the latter duty also requires us to provide a minimum of standard safe and legal care to any young people to whom we are corporate parent. I am balancing these two duties in the context that the safe and reasonable number of unaccompanied asylum children for Kent to look after has already been determined by the Home Office as 231, and we currently have nearly double that number in our care.

As you know, unfortunately those two statutory duties have been in tension and delicately balanced again for a second time in less than twelve months, as increased numbers of young people have continued to arrive. However, because of the exponential increase in early new arrivals at Dover since the beginning of 2021, in addition to the legacy pressures we continue to manage from 2020 I very regretfully find myself writing to you both again just 10 months after I did so in 2020. The continued failure of the voluntary National Transfer Scheme to transfer sufficient UASC young people out of Kent in a timely way to other local authorities, coupled with the reluctance of government to use its powers to mandate it has led me to this position again.

Following consultation with Sarah Hammond and the service managers, I believe now that the remaining reception beds at Millbank and Appledore are full, and we are close to exhausting the limited number of available beds for both foster placements and supported living in the semi-independent sector in Kent who able to provide the required quarantine conditions. All indicators detailed below show the UASC social

work and care services are now under intolerable pressure. I believe the balance of risk in those statutory duties has once more shifted, and that we will no longer have the capacity to offer sufficiently safe care to discharge our statutory duty to any new UASC arrivals at the port of Dover, and at the same time to the existing children and young people, UASC and citizen, to whom we are corporate parents.

The evidence and thinking behind my advice is familiar to you, but can be summarised as follows;

- 1) Since the beginning of the year our number of UASC in care has risen from around 274 to just over 400 today. The recommended maximum for Kent is 231. However we know from bitter experience that the number of young people, while important, must be considered alongside the contextual pressure on our services. Availability of beds is one factor, but strain on all the services required to safely look after a child in care are the more significant factor. What we learned last year, when UASC numbers got to over 600 before we ceased to receiving new arrivals, was that on reflection we should have called a halt to new arrivals earlier and that if presented with similar circumstances again we should do so. This was reflected in feedback from staff in the UASC teams, including one who raised concerns anonymously with Ofsted as a Whistle blower about safety concerns in reception centres in August 2020. While we were able to resolve the complaint to Ofsted's satisfaction, it was a salutary reminder of how difficult things had got. I am writing to you at this stage to avoid a repeat of those acute problems this year, in the context that in May 2021 we received the largest number of new arrivals for this month of year ever, including both 2015 and 2020. We anticipate that numbers will only grow from here and grow rapidly. In addition we have around 1100 UASC care leavers (compared to 980 in August 2020) a number which continues to rise at around 15 per month through the most of the year.
- 2) The new arrivals have been fuelled exclusively by arrivals by dinghy from France since the beginning of 2021, which is now the principal route into the UK for UASC following Covid-19 restrictions on all other types of travel. In May alone we received 115 arrivals and have already received a further 35 in June. Once again the pace and volume of arrivals is about to overwhelm our service capacity. Talking to colleagues in other reception authorities (eg Portsmouth and Croydon) it is clear that UASC arrivals have all but dried up elsewhere in the country, and that the main, virtually sole, point of entry for the UASC in the entire country is now by dinghy to the Kent coast.
- 3) Illustrations of the effect on our capacity are current average social work caseloads in the UASC team of 25, with some full-time workers holding cases of 30+ (against a target caseload of 15) with 51 young people currently unallocated to a social worker, and we are currently struggling to allocate any new arrivals to a social worker.
- 4) IRO caseloads are at an average 65 (against a target of 50) with 75 young people with no allocated IRO today.

- 5) We have seen an increase in the number of female young people, younger children and those coming from countries where sexual and other types of exploitation are more likely to be a risk compared to last year. This accentuates the need for social workers to be very familiar with their young people and being in a position to build trusting relationships with them to keep them safe. This is not possible with caseloads of 25+.
- 6) Our backlog of Age Assessments now stands at 134 compared to 94 in August 2020 (A Merton-compliant assessment takes 4 social work days to complete). This includes both the new age assessments generated by age challenges at the Border and the 46 legacy cases from 2020 who are challenging the determination given to them by the Home Office team from last year. We are still waiting for the mobilisation of an offer for a team of child in care social workers from the Home Office to be able to free up our own to undertake the backlog of age assessments.
- 7) Quarantine isolation for arrivals from France is still required and looks likely for the remaining of 2021. We are no longer able to offer this to new arrivals over 16 yrs in our reception centres, particularly with the loss of the Oakwood site, and since the weekend we have been relying on Private providers in the semi-independent market to fulfil this Public Health duty for us, There continues to be a reluctance on the part of local foster carers to go into isolation with young people which means we are no longer able to make placements for any under-16s in Kent
- 8) The only placement options, for both under -16s and 16 and 17 year olds which are now generally available to us are out of county and far away. Arrivals this week are already being placed directly out of County. We do not have the staff to safely support placements out of county. We have been unable to recruit any more SW staff to support more UASC placements, even when using external recruitment agencies.
- 9) The attempts by ourselves and Home office to stimulate the voluntary NTS have yielded 288 transfers in total since the 1<sup>st</sup> June 2020. However, in the context of the 272 arrivals in 2021 only 113 young people have been transferred in total, 45 of whom were legacy cases from 2020. Movement out for new arrivals slowed even further in the last 2 weeks with only 11 legacy young people being transferred in June so far. The transfers out so far in the whole of 2021 have been exceeded by arrivals into KCC in May 2021 so far alone. All available evidence demonstrates a voluntary NTS can never keep pace with the rate of arrivals in Kent, leaving large numbers of UASC in limbo waiting a placement elsewhere, before eventually remaining in our care
- 10) All of the above relate to short term issues of being able to discharge our duty of care to UASC who have arrived and will arrive after Monday. In addition there is the long term issue of the distortion of Kent retaining , effectively , the bulk of the nation's UASC in one local authority care service. The creation of

the NTS and associated legislation in 2016 by the Home Office was explicitly intended to prevent this, and remains their own guidance. Yet here we still are. With 400 in our care now, we are nearly double the government guidelines for the number of UASC Kent should or could safely look after (0.07% or 230 children in Kent) I believe there are only 1 or 2 other LAs, if any, close to or over 0.07%. The long term effect on our services of having such a disproportionately large cohort of UASC in Kent alone could have a knock on effect on the performance and safety of all of our children's social care services, but particularly those for children in care and Care leavers. No single service should be asked to take this strain in the way that Kent has, as reflected in the Home Office's own guidance, and no service can safely take it in my view.

- 11) As you know, this situation has a simple remedy, which we have been asking the Home Office to implement for some time and have now issued a pre-action letter to the Home Secretary. A small national problem (500 arrivals) could be easily remedied by a national solution - 2 or 3 UASC transferred to every LA and a compulsory rota for distributing new arrivals. Only government, not KCC, can make that happen.

Finally, and for the sake of clarity, I wanted to outline specifically why I am giving you this advice now, with 400 UASC currently, when last year we had up to 600 UASC in our care before giving the same advice. In other words, what is different this time? The specific reasons are;

- a) We have one less reception centre to carry out quarantine with the closure of Oakwood, removing a significant number of reception/quarantine beds
- b) We learned last year that on reflection it would have been better and safer to make this call earlier. The strain on our services had become dangerous, as our Ofsted Whistleblower incident and other feedback from staff showed, together with how long it took the service to recover before we could resume taking new arrivals again.
- c) There are an even higher proportion of age disputed young people this year (around 75%). We currently have a huge backlog of age assessments, and the additional 20 social workers funded by home office have departed, meaning age assessments are absorbed into UASC social workers workload who are already currently carrying caseloads at nearly double recommended levels.
- d) There are significantly more under-16s, girls, and young people vulnerable to sexual exploitation this year, making the supporting social work more complex and placements more difficult to find
- e) As we have no reception and quarantine beds left we are already placing all new arrivals in placements outside Kent – adding travel to the caseload strain of social workers, and making contextual safeguarding more difficult with police and partners
- f) We are supporting about 120 more UASC care leavers (1,100 in total) across the service than last year, adding to service strain
- g) The pace of arrivals in 2021 is already well ahead of 2020, which means fewer available placements within Kent compared to last year, yet the

voluntary NTS is managing to transfer even fewer than it did last year. If we do not stop now, the situation in Kent will get very dangerous very quickly.

In conclusion, I believe I can only safely discharge my statutory responsibilities to children currently in care to KCC and any UASC children arriving after this weekend by advising you that our service no longer has the capacity to safely look after new UASC arrivals at Dover. We will only be in a position to do so when UASC children currently in our care are transferred to other LAs, on a "one in one out" basis. We know from our experience last year when we took the same decision, that the Home Office can place children directly from the port to other LAs (who do have capacity to provide the right standard of care) and that the children will be safe and well cared for.

I am sad to be offering you this advice in circumstances that were both predicted and eminently preventable. All of the above as you know, is motivated by my concern for the welfare of our UASC young people, both those in our care and those who may arrive in England after Monday.

I await your instructions in the light of my advice,