

By: Ben Watts, General Counsel (Monitoring Officer)
To: All Elected Members
Subject: Report
Date: 25th August 2023

Summary: This report is made under section 5 of the Local Government and Housing Act 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 (UAS children) arriving on the Kent coast. This has been the subject of three prior Section 5 reports given the ongoing challenge to comply with competing statutory duties. I have also advised Members of current litigation involving the Council and the judgment of the High Court on the preliminary issues for that litigation handed down on 27 July 2023 (judgment) and subsequent order.
2. As I have previously explained, Kent County Council has a range of statutory duties in relation to all 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. In particular, 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. Further, section 17(1) of the Children Act provides that it is the general duty of every local authority to safeguard and promote the welfare of children ‘within their area’ who are in need. This will apply to any such child physically present in Kent.
4. I have also previously advised that the statutory Director of Children’s Services (DCS) (then Matt Dunkley, now Sarah Hammond) have concluded that the competing interests of different sets of statutory duties means that the Council would inevitably fall outside at least one of them. In simple terms, they say that the Council cannot provide a safe service that adequately safeguards and promotes the welfare of the number of children arriving in Kent in accordance with its duties under section 11 of the Children Act 2004.

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 National Transfer Scheme (NTS). This has meant that some of the UAS children arriving at the port have been transferred to other local authorities for care. The DCS had put in place arrangements to seek to safeguard these UAS children until the NTS organised for a UAS child to be placed with another local authority.
6. It has become apparent that the NTS is not working as effectively as needed and the numbers of children being transferred is insufficient. The speed with which those transfers are taking place is significantly less than is required to enable the Council to safely care for the numbers of UAS children newly arriving at the port (especially during periods of good weather) as well as all other children already in its care. The DCS is clear that if those transfers took place as the scheme expressly provides, then Kent County Council would no longer find itself in breach of its statutory duties towards individual vulnerable young people presenting in Kent.
7. As I have already advised Members, the Court confirmed that in failing to provide services to **all** UAS children arriving in Kent (approximately 4,500 a year in 2022) we were not meeting all of our statutory duties, including the section 20 duty mentioned above. The Court also highlighted that in continuing to provide services to children already resident in the County, by accommodating them into care when they required it, the Council was discriminating against those children arriving in Kent from overseas.
8. Running concurrently with the judgment being received, the numbers of arriving unaccompanied asylum seeking children continues to be exceptionally high placing continued pressures on services delivered by the Children, Young People and Education directorate and the Council generally.
9. In simple terms, prior to the judgment the Council provided services in three separate ways. Firstly, through the Council's own Integrated Children's Services to citizen children and arriving UAS children where there was capacity. Secondly, through a capped Reception and Safe Care Service, which was intended to support the effective delivery of the NTS. Finally, providing safeguarding support and intervention to those children in accommodation organised by the Home Office, who employed their own social workers in those accommodation settings ahead of the children being transferred to other local authorities under the National Transfer Scheme.
10. The Judge has ordered that Kent County Council must take all possible steps to increase its capacity to accommodate and look after all UAS children arriving in Kent in lawful discharge of its Children Act 1989 duties, including but not limited to seeking and agreeing additional funding and other resources from the Government, requesting assistance with placement options from other local authorities, and/or lawfully redeploying existing resources within Kent County Council. This includes the repurposing of staff currently

delivering social work and early help and open access staff across the CYPE Directorate as well as other parts of the Council.

11. 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 arrival numbers are low this is safely achieved. The Executive and DCS have also been clear that the safeguarding and welfare of all children is an absolute priority for them. Children and young people present with a variety of needs, in addition to those who have need of accommodation and support under Section 20. These include children and young people at risk of, or who have suffered, serious harm as well as those who require early help and family support intervention to prevent harm from occurring.
12. The Council's arguments in relation to asking the Court to review the NTS do not fall to be considered until October. Accordingly, in the meantime the Council has and is undertaking a range of activities to urgently seek to address the concerns of the Court without a fully functioning NTS. However, this section 5 report is issued because those actions and the continued high numbers of arrivals mean that the changes are not without consequence.
13. Firstly, in strict compliance with the Court's Orders, the Council has removed the cap from the Reception and Safe Care Service notwithstanding the fact that transfers under the NTS have not progressed at the rate required.
14. In the first three weeks following the judgment, I am advised that this meant that an additional 208 arriving UAS children were supported by Kent County Council. During the same period an additional 38 young people ordinarily resident in Kent presenting as children in need were supported by the Council. Unsurprisingly, the DCS has confirmed that this uncapped position is unsustainable and will become unsafe without the NTS transfers progressing at the rate required.
15. To provide some context to the numbers mentioned in paragraph 14, Kent County Council is one of the largest social care authorities in the country (alongside Birmingham City Council). Caring for an additional 38 ordinarily resident children is already a very high number. It therefore follows that to have supported an additional 246 children (including 208 arriving UAS children) in that period has pushed the service to, and in some cases beyond its absolute limit.
16. I am further advised by the DCS that since 27 July 2023, supported across her service and the broader Council, she has undertaken, amongst other actions, the following activities to do everything possible to comply with the judgment:
 - a. She has worked with the Council's infrastructure team who have undertaken an extensive search for land or premises in our area that

may be used or repurposed for accommodating UAS children. Work is ongoing to explore the feasibility of those sites;

- b. Her colleagues are in discussions with the Home Office regarding the possibility of the two hotel sites in Kent currently being used by the Secretary of State to accommodate UAS children potentially being converted into facilities that can be operated by the Council as temporary reception centres. We have also asked Central Government to explore whether there are any sites in Kent as part of the Government estate which may be repurposed to be used for reception facilities;
- c. Engaged extensively with Central Government, including with officials in the Home Office, Department for Education (“DfE”) and the Department for Levelling Up, Housing and Communities (“DLUHC”) to seek support on a range of issues, including:
 - i. Funding;
 - ii. Data and information sharing;
 - iii. Premises availability and planning control;
 - iv. staffing shortfalls;
 - v. Availability of placements outside of Kent; and
 - vi. Ensuring the effective operation of the NTS
- d. Her team are liaising closely with Ofsted in regards to the registration of facilities to be used as reception centres for UAS children aged 16 and 17;
- e. She has taken a decision to double the bed capacity at the Council’s Millbank and Appledore reception centres as a result of young people sharing rooms, which is contrary to regulations. The DCS has furthermore taken the decision to place under 16 young people into Appledore, which is an unregistered provision and again against regulations. However, this is, and can only be, a very short-term solution as the arrangement will not be permitted when the requirement for Ofsted registration commences (from 28 October 2023)
- f. The Council has awarded a contract for a new reception facility which would increase our overall bed capacity, but this is not without challenges to become operational.
- g. The Council is increasing the number of block booked independent foster care placements that it maintains on a rolling basis. The DCS is also exploring the creation of a large registered children’s home in Kent

to provide temporary accommodation in-house to UAS children aged under 16;

- h. The DCS has written to the DCSs at all other local authorities on two separate occasions, including under section 27 of the Children Act 1989, seeking assistance with placements and resources to care for UAS children. This has led to some offers of placements being made by other local authorities, and so far 96 UAS children have completed the transfer from the Council via this route. No offers of help have been forthcoming from the DCS's request that colleagues across her sector support her with their own staff or care places.
 - i. The DCS has engaged and met with the officers from the Association of Directors of Children's Services (the "**ADCS**") to discuss what support the ADCS can give, both in terms of encouraging other local authorities to accept transfers promptly via the NTS, as well as to work with Central Government to achieve that objective;
 - j. She has also engaged and met with the regional leads of the Strategic Migration Partnerships ("SMPs") which facilitate transfers being made via the NTS, to better understand the blockers to transfers being completed quickly and what action can be taken to speed them up; and
 - k. Her colleagues have repeatedly written to independent fostering agencies across the country on a weekly basis to try and identify any placement capacity that exists.
17. I am advised that the above steps have required her staff to be redeployed from their day to day functions of seeking to look after the vulnerable children in our care, and have required extensive efforts from all at the Council – including our social work resource – by working overtime and shouldering enormous pressure to deliver a safe service. Additionally, the Council's limited corporate capacity (infrastructure, finance, ICT, legal) has also been redirected to support the response. Staff who would normally be employed during weekday hours in front line child protection and early help services have also been working weekends and overnight when available to assess the 489 UAS children who have arrived since the 27th July 2023, 315 of whom have entered into our care. This position is simply not sustainable and inevitably has an impact on other services.
18. The Children Act was introduced in 1989 and whilst there have been amendments to the legislation, supporting/linked regulations and guidance since, it does not contemplate the circumstances that the Council faces and as evidenced by the numbers in paragraph 14. The obligations placed upon the Council are non-negotiable as recognised in prior section 5 reports and in the judgment. We had understood that this is why later legislation gave the Secretary of State for the Home Department powers to mandate the NTS to effect the safe care of UAS children and to avoid difficulties in competing statutory duties arising.

19. Whilst Kent County Council is a large local authority, it has neither the resources nor the levers available to central government nor the resources of the combined collective of all local authorities in the Country. These are vulnerable young people who require support and care, and the DCS is strongly of the view that their needs are best met through an effective and efficient transfer under the NTS.
20. The Council continues to work for an effective solution that will meaningfully address the issues raised in the judgment in a sustainable way but the Council is unable to do this unilaterally. In the meantime, it is increasingly apparent that there will be further areas of non-compliance with statutory duties that are consequential on the current activities, arrival numbers and the requirements of the Court.
21. I am assured that the DCS and the Council continue to prioritise as best they can but given the conscious and unsustainable approach being adopted and required by the judgment, I wished to make Members aware of the broadening of my earlier risk of statutory non-compliance linked to this. This non-compliance includes but is not limited to, placement of children into unregulated provision, non-allocation of social work and IRO staff, rejecting the request of Kent resident family members and older young people to come into care, non-completion of basic care planning functions including looked after children reviews, visiting requirements health assessments and education planning.
22. Furthermore, the DCS and I have jointly commissioned an equality impact assessment and further specialist legal advice relating to the issues raised by the judgment relating to the way in which the Council is making decisions about newly presenting UAS children and those that are ordinarily resident. In the meantime decisions are being taken about The Council's ability to comply with its statutory duties in relation to individual children (including resident children) presenting as children in need on a case by case basis taking account of their individual circumstances and best interests.
23. I anticipate that I will issue a further update report on receipt of the above-mentioned assessment and advice. Members will be advised of further developments as necessary both through a further briefing and additional updates, section 5 reports or key decisions where appropriate. The issue will be added to the County Council agenda for 21 September 2023 and both this report and any subsequent update will be published at that time.

Ben Watts
General Counsel
Tel No: 03000 416814
e-mail: benjamin.watts@kent.gov.uk

Background Information: none