

DECISION REPORT TO CABINET MEMBER

From: Sarah Hammond, Corporate Director Children, Young People and Education.

To: Sue Chandler, Cabinet Member for Integrated Children's Services

Subject: Unaccompanied Asylum-Seeking (UAS) children Support and Accommodation – 19 December 2023

Key decision: 23/00110

Classification: UNRESTRICTED Report *with EXEMPT Appendix A which is not for publication. Paragraph 3 of Schedule 12A of the Local Government Act 1972, as amended, refers.*

Future Pathway of Paper: Cabinet Member Decision

Electoral Division: All Divisions

Summary: Following a High Court judgment on 27 July 2023 and the subsequent court orders, it has been determined Kent County Council (KCC) has not always met its statutory responsibilities, including its Section 20 duties, in relation to Unaccompanied Asylum-Seeking children (UAS children) arriving in Kent. Further court hearings took place and orders were made on 18 August 2023 and 15 September 2023, by which the Judge ordered that KCC must take all possible steps to increase its capacity to accommodate and support 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 Government, requesting assistance with placements from other local authorities, and or lawfully redeploying existing resources within the County Council. A further order is expected to be made by 21 December 2023 requiring the Council to agree an action plan with Central Government departments to achieve that objective.

KCC separately asked the court to review the operation of the National Transfer Scheme (NTS), which was considered at a hearing on 10 October 2023. A judgment was handed down on 28 November 2023 finding that the Secretary of State for the Home Department (SSHD) was unlawfully operating the NTS between December 2021 and 27 July 2023. Consequential orders are expected to be made by 21 December 2023 (following a further relief hearing on 15 December 2023), requiring the SSHD to prepare a plan for improvements to be made to the NTS.

Discussions have been ongoing with the Home Office (HO) and the Department for Education (DfE), as directed by the court, to identify a plan with sufficient funding provided by Central Government to enable KCC to develop a pathway to meet its statutory duties. This report sets out the necessary decisions and delegations that are now required to enable KCC to put in place the necessary arrangements to increase Ofsted regulated accommodation provision, to enter into necessary contractual agreements and operational arrangements to deliver the required services in line with the Court Orders.

Recommendation(s):

The Cabinet Member for Integrated Children Services is asked to:

- a) **APPROVE** the policy approach to securing and delivering additional accommodation and support for UAS children, as detailed in the report;
- b) **CONFIRM** the revised property and infrastructure requirements for the service in light of the updated UAS children Accommodation approach;
- c) **NOTE** the current position and the measures already taken by the Council.
- d) **NOTE** that the capital costs and operating costs are expected to be reimbursed by Central Government;
- e) **DELEGATE** authority to the Corporate Director of Children, Young People and Education to take required actions, including but not limited to agreeing funding arrangements in consultation with the Corporate Director of Finance and entering into contracts or other legal agreements and undertaking relevant service review or redesign, to establish and enter operational arrangements both in relation to existing and new arrangements, as noted in the report, to implement the policy decision and ensure lawful compliance of the Councils statutory duties relating to UAS children service provision; and
- f) **DELEGATE** authority to the Director of Infrastructure to, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services and the Corporate Director for Children, Young People and Education, implement the relevant building works, finalise and enter into necessary contracts, funding or other legal agreements (including the completion of land transfers and acquisitions), and reallocate properties from the disposal list, to implement this decision.

1. Introduction

- 1.1 The recent court judgment has confirmed that Kent County Council's UAS Children's Service is responsible for the care and accommodation of all newly arrived UAS children into Kent. When UAS children are referred outside of core business hours, the Out of Hours (OOH) Service provides the initial response. This service is provided to comply with the Council's duties under Sections 17 and 20 of The Children Act 1989 (CA89) , noting that a UAS child's eligibility is the same as for a citizen child. Temporary care and accommodation is provided by the Council until the child's case is transferred to another local authority under the NTS or to Kent's mainstream Child in Care (or eventually the 18+ Care Leaver Services), where support continues until the child reaches an age where they are no longer eligible, voluntarily leaves local authority care, or is advised by the Home Office that they must return to their country of birth.

2. Background Context

- 2.1. Prior to 2015, the Council remained responsible for all UAS children who arrived in Kent and there was no mechanism for the Council's functions to be transferred to other local authorities. Following the significant increase in numbers of UAS children to Kent in 2015 the NTS (including an NTS protocol) was established following enactment of the Immigration Act 2016. The NTS was initially established as a voluntary scheme for enabling the transfer of UAS children between one local authority and another, to try and alleviate some of this pressure on Kent and other local authorities, whose percentage of UAS children were then above 0.07% of their 0-18 population, by supporting a fairer, more equitable distribution of UAS children across all local authorities. A total of 317 UAS children were transferred from Kent to other local authorities between July 2016 and March 2018, when KCC ceased its participation in the scheme. Reasons for this included other local authorities not volunteering to accept responsibility for the children, which risked KCC not meeting its corporate parenting responsibilities for these children. Between March 2018 and June 2020 KCC took responsibility for all UAS children presenting within its borders and discharged its duties under the CA89.
- 2.2 In June 2020, there was a significant increase in the number UAS children arriving to Kent, and only small numbers being transferred to other local authorities under the NTS. The level of demand meant that in August 2020, and again in July 2021, it became unsafe for the Council to continue accommodating all UAS children who arrived in Kent. Numbers reduced to safe levels within the available capacity between December 2020 and July 2021, allowing the Council to resume looking after UAS children arriving during that period.
- 2.3 From July 2021, the Home Office began accommodating UAS children who KCC did not have safe capacity to support in hotels.
- 2.4 In September 2021, following discussions with Central Government and threatened legal proceedings, a protocol was signed between the Council, the Home Office and Department for Education (DFE). This outlined how the Council would maintain its, then, 0.07% threshold for UAS children in its Child in Care Service, whilst a Reception and Safe Care Service (RSCS) supported a further 120 UAS children at any one time, with the vast majority subsequently being transferred to the care of other local authorities under the NTS. It was intended that if UAS children were transferred via the NTS with sufficient throughput (within 10 working days) then the Council would be able to look after all UAS children who arrive in Kent. The NTS 10 working days timescale was not met, meaning that the Council remained in breach of its statutory duties to some UAS children who it could not safely accommodate and support. UAS children arriving above KCC's safe capacity limit were accommodated by the Home Office in hotels.
- 2.5 In December 2021, it became mandatory for all UK local authorities to participate within the NTS, with their mandatory period determined by their current intake levels (determined by whether they were under their 0.07% threshold). It remained a requirement for transfers to be completed within 10 working days. However, this timeframe was again not met meaning that the Council remained in breach of its duties to some UAS children whom it could not safely accommodate and support, and who were accommodated by the Home Office in hotels.

- 2.6 In August 2022, the Government changed local authorities' threshold for UAS children within their Children in Care population from 0.07% to 0.1% with immediate effect. For KCC this meant care for an additional 104 UAS children being supported long-term, a total of 346 UAS children for the 2023-24 financial year.
- 2.7 Between December 2021 and July 2023, the RSCS accommodated over 1900 UAS children. Of these children, over 1300 transferred to the care of other local authorities under the NTS. The majority of the remaining children stayed in the Council's care long-term whereby the Council continued to meet its duties to maintain its 0.1% threshold as existing UAS children turn 18. Other children were not referred to the NTS due to being reunified with UK based family, turning 18 in under 13 weeks of arrival, age assessed as adults, or going missing from the Council's care.
- 2.8 On the 27 July 2023, the High Court ruled the RSCS protocol was unlawful due to it imposing a cap on the number of UAS children (120) that the Council would support on top of its 0.1% threshold. The court also ordered that Kent must take all possible steps to support all UAS children on arrival to Kent with immediate effect, and to increase its capacity to do so. Between August and October 2023, the Council's UAS Children's Service has accommodated over 1000 children. Of these children over 800 have transferred to the care of other local authorities under the NTS.
- 2.9 This key decision is being sought in response to the High Court orders which have directed the Council to take all possible steps to increase its capacity and fulfil its statutory duties toward all UAS children who are notified to the Council. Current research and data (including from the Home Office) indicate that UAS children will continue to arrive, in large numbers, for the medium to long-term, subject to any further changes or implementation of national immigration policies.
- 2.10 Existing infrastructure and services are considered insufficient to meet the Council's duties to the large numbers of UAS children expected to arrive. The Council requires an expansion of its infrastructure and services to respond to the immediate needs of all newly arriving UAS children, who are often referred in large numbers and at short notice. This includes the development of the Council's own, age-appropriate, Ofsted regulated, accommodation and delivery of care offer, commissioning of additional accommodation and support where required, recruitment of both temporary and permanent staff to meet social work duties, and a transport framework to move children from immigration facilities to the accommodation and then from the accommodation to their designated local authority under the NTS. The proposed infrastructure and services are needed to meet the Council's statutory responsibilities, and to maintain a service that consistently achieves good outcomes for children.

3. Action Taken to Date

3.1 The Council has always been clear through the Executive and the Director of Children's Services (DCS) that returning to a position of compliance with all of KCC statutory duties, safeguarding and welfare of all children is a priority. The Council has successfully asked the Court to review the operation of the NTS by the SSHD and in particular his failure to operate the NTS correctly, with sufficient throughput to keep up with demand. A further judgment handed down on 28 November 2023 ruled that the SSHD had acted unlawfully in respect of his operation of the NTS between December 2021 and July 2023, and it is anticipated that the SSHD will now be ordered to prepare a plan for how the functioning of the NTS will be improved to ensure transfers are completed with sufficient speed and volume. Continued high numbers of arrivals and failures in the functioning of the NTS have significant consequences for the Council which were set out in the section 5 report circulated to Members on the 25 August 2023.

3.2 Since the court order in July, the following actions have been undertaken to do everything possible to comply with the court judgement and orders including:

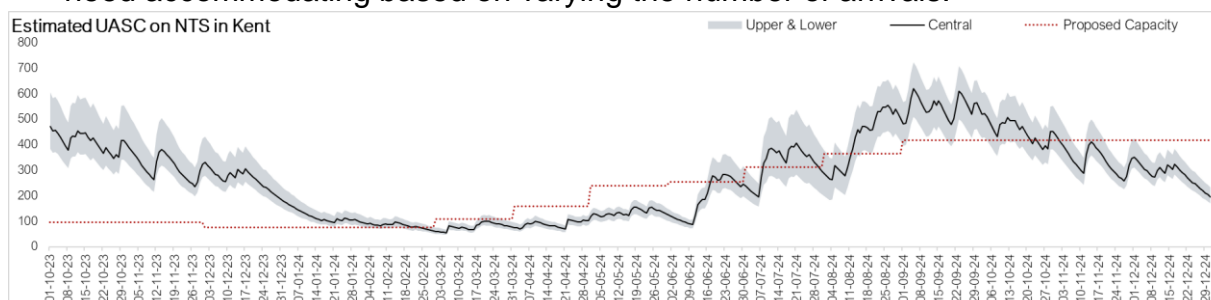
- Ongoing discussions with the Home Office and DFE and the Department for Levelling Up, Housing and Communities (DLUHC) to seek support on a range of issues, including funding, data and information sharing, Ofsted regulation, premises availability and planning control, staffing shortfalls, availability of placements outside of Kent and the effective operation of the NTS.
- Engaging with other local authorities to encourage them to accept the transfer of UAS children via the NTS, and to offer support and assistance to KCC where possible, including making placements and social work resource available to KCC.
- Engaging in cross-service (internal and external) planning for how statutory responsibilities are best met whilst UAS children await their NTS transfer.
- A detailed search for land and premises has been undertaken in Kent to identify sites that may be repurposed for accommodating UAS children.
- Detailed conversations with Ofsted in regard to the registration of facilities required from 28 October 2023 in line with new regulations relevant to all this cohort of looked after children and young people.
- Implementing short term solutions to ensure that the existing active accommodation is maximised to meet the demand of newly arriving children. This has included expanding an arrangement with independent fostering agencies (IFA's) to block book foster beds for newly arriving UAS children, engaging the independent supported accommodation market to source placements and doubling the capacity of the Service's existing reception centres by accommodating 2 children to 1 bedroom. However, since the requirement to register all supported accommodation with Ofsted from 28 October 2023, reception centres registered with Ofsted, have needed to operate at single occupancy.

- Analysis of data relating to transport of newly arriving UASC children from the Home Office’s Kent Intake Unit (KIU) in Dover to age-appropriate Ofsted regulated accommodation, and then from this accommodation to their designated local authority under the NTS, to estimate the likely future demand and cost when the Council takes over this operation from the Home Office.
- Establishing a new role: Assistant Director of UAS Children Services to oversee both the strategic response and daily operations of the expanded Service.
- Recruiting managers, social workers, and support staff to ensure the Council can respond to newly arriving UAS children at the KIU, Dover, by assessing their needs and securing appropriate accommodation for them. Secondly, ensure the Council meets its statutory responsibilities for these children until they are moved to the care of other local authorities under the NTS. Thirdly, ensure the Council consistently achieves successful NTS transfers of UAS children in its care, which keep pace with the number of newly arriving children requiring accommodation.
- Improving management information systems to support the Council’s need for current and accurate data, including from the Home Office, relating to UAS children in its care and NTS transfers.

4. Accommodation requirement

4.1 The reliability of future forecasting for the estimated number of UAS children the Council needs to plan for is extremely difficult to predict, due to the variability in the pattern of children crossing the channel, and reliance on the effective functioning of the NTS. The following chart and table summarise the estimated number of UAS children requiring support using historic trends. This relates to the number of children estimated to be supported temporarily by Kent in advance of being transferred to their destination local authority through the NTS (it does not include the number of UAS permanently looked after by Kent). The number of children to be accommodated and cared for will depend on both the number of arrivals and the speed of the NTS. This modelling assumes the NTS is able to at least keep pace with the number of who require temporary accommodation and support, and the current length of stay remains roughly the same as it is now.

4.2 **Graph: 1** this shows the estimated average number of UAS children who will require accommodation & support from KCC (above the 0.1% NTS protocol threshold, whilst waiting transfer to their destination local authority via the NTS. This also shows the range of projections on the number of UAS children that will need accommodating based on varying the number of arrivals.



4.3 **Table 1:** using the central estimate (below) in the graph above, the data shows the estimated minimum, maximum and average number of UAS Children who will require accommodation and support from KCC (above the 0.1% NTS protocol threshold), whilst waiting transfer to their destination local authority via the NTS, in a day within each month.

CENTRAL Estimate	Oct 2023	Nov 2023	Dec 2023	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
Min	347	236	185	94	63	54	69	118	88	195	264	478	382	257	195
Average	412	314	265	121	83	79	89	134	192	328	423	549	459	340	282
Max	472	389	330	177	96	100	107	154	284	406	554	619	541	424	352

4.4 The estimated maximum capacity requirement (to temporarily support all UAS children in advance of their transfer via the NTS) ranges from 480 to as high as 620, however this could drop as low as just 50 – 100 places in some months, particularly when there are low numbers of UAS children expected to arrive in winter. Using the central estimate, the capacity requirement is over 400 places for 4 of 12 months.

4.5 Current proposals are for the Council to secure in-house accommodation, to mitigate against saturating an already fragile care market in Kent, along with enabling a potentially more flexible model that can respond to significant unpredictable changes in demand. This will also enable the Council to secure planned provision in a care home for UAS children aged under 16, who have historically been difficult to place via the market. Section 5 outlines the statutory frameworks for the delivery of accommodation of Looked After Children. The table below summarises KCC’s current service capacity (prior to the court judgment) and the potential future capacity to be secured. It is recognised during high demand periods where the number of UAS children requiring support exceed the standard offer outlined below, all additional children will be accommodated through the commissioning of external placements, for which the Council is seeking funding from the Home Office.

4.6 **Table:** Summary table of KCC’s current service and future capacity

Tranche	Accommodation	Date	Existing Capacity	Future Under 16 Capacity	Future 16 & 17 yr. old only Capacity
1	Property 1	Ongoing	46		50
1	Property 2	Mar-24	38		29
2	Property 3	Aug-24			32
2	Property 4	Sep-24			49
2	Property 5	Jun-24		10	
3	Property 6	Jul-24		36	
3	Property 7	Apr-24			50
3	Property 8	Jul-24		22	
Commissioned	Property 9	May-24			80

Commissioner	IFA block	Ongoing	10	15 - 30	
Commissioner	Semi (female 16&17)	Ongoing	6		15
Commissioner	Other Fostering	Ongoing	20	15	
Total	Ring-Fenced Regulated Capacity		120	98 - 113	305

5. Statutory responsibility and regulatory standards

- 5.1 Kent County Council has a statutory responsibility to respond to UAS children presenting within its borders under tCA89, which sets the welfare of children as *'paramount'* (Section 1). Section 17 outlines the duty all local authorities have *'to safeguard and promote the welfare of children within their area who are in need'*. Section 20 outlines the duty all local authorities have to *'provide accommodation for any child in need within their area who appears to them to require accommodation as a result of a) there being no person who has parental responsibility for them, b) his being lost or having been abandoned; or c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care'*.
- 5.2 Accommodation provided under Section 20 of the CA89 will vary, depending on the child's age, needs and circumstances but typically will be either a family setting (foster care) or residential setting (children's homes or supported accommodation). Foster care and children's homes are accommodation for children aged under 16 and it is illegal for a child aged under 16 to be placed in accommodation not regulated by Ofsted. In the event of this happening the local authority must report this to Ofsted with a plan as to how the child will be moved to regulated accommodation as soon as possible. Supported accommodation is for children aged 16-17 years old, but an individual child's needs might require a level of support best provided by a foster carer. Very careful assessment must be undertaken before placing individual older children (16-17 years old) in children's homes and foster care due to much younger children being placed there.
- 5.3 Organisations providing foster carers must be registered with Ofsted under the Care Standards Act 2000 (the CSA 2000) to operate. It is illegal for organisations to provide foster carers without being registered with Ofsted. There are national minimum standards that foster carers, and their organisations, are required to meet (31 in total). Ofsted regularly inspects organisations and their carers to ensure these standards are met and maintained. Local authority fostering services are inspected within Ofsted's inspections of local authority children's services (ILACS) and held to the same standards.
- 5.4 Children's homes (accommodation for children aged under 16 years old) must be registered with Ofsted under The Care Standards Act 2000 and The Children's Homes (England) Regulations 2015 to operate. It is illegal to run a children's home without being registered with Ofsted. There are 9 quality standards that providers

of children's homes must meet, and Ofsted regularly inspects providers and premises to ensure these standards are met and maintained.

- 5.5 Since 28 October 2023, supported accommodation for children aged 16-17 years old, must also be registered with Ofsted under the CSA 2000 and the CA89. It is illegal to run supported accommodation without the appropriate registration. There are 4 quality standards that providers of supported accommodation must meet, and Ofsted regularly inspects providers and premises to ensure these standards are met and maintained.
- 5.6 These responsibilities and standards are met for UAS children the Council accommodates and supports. Since the High Court ruling, the Council has strived to continue meeting these responsibilities and standards for all UAS children who have been supported. However, the current insufficiency of infrastructure and services means that some UAS children ages 16 and 17 are currently being temporarily accommodated in an unregistered placement (at Appledore) until they can be transferred to another local authority and presents a risk to the Council's future ability to meet its statutory duties in the longer term, for all UAS children who are forecast to arrive in Kent.
- 5.7 Whilst KCC has looked at alternative ways to comply with its statutory duties, it has become evident through the significant placement searches undertaken in the external market (particularly during the peak of new arrivals in August of this year) that it is not possible to secure sufficient, short-term, cost-effective accommodation in Kent. Recent government reports have highlighted the ongoing challenges of the "broken" care market, which along with the volatile and unpredictable nature of the number of new arrivals into Kent, means a combined in-house and externally commissioned placement offer is required to meet the requirements of the duty. In addition, it is not just the securing of sufficient accommodation, as the provision of care, transport and social work resource are also considerations (further details provided in section 7).
- 5.8 There are no specific statutory duties in relation to transport and S20 duties however, the Council cannot effectively meet its wider statutory duties without a transport arrangement to safely transport newly arrived children to their temporary accommodation in Kent and then onto their final destination local authority (through the NTS).
- 5.9 Ensuring we have sufficient social workers to meet our duties in relation to Section 20 is a key consideration. The recruitment and retention of social workers is an ongoing challenge, coupled with finding sufficient social workers with UAS children experience. There is also the added complication that volatility in demand means that the number of social workers required will change over the course of a year. It is therefore expected the service will employ a core group of social workers on a permanent basis along with significant use of agency staff (further details provided in section 7).

6. Accommodation Solutions

6.1 Accommodation Places

6.1.1 The approach to securing sufficient placements has been split into two streams: the Commissioning of external accommodation and the purchase and development of in-house provision. The in-house provision has subsequently been split into 3 tranches: Tranche 1 (property 1 and 2) relates to remedial works at existing properties already used to support UAS children; Tranche 2 (properties 3-5) relates to the development of vacant properties owned by the Council which are to be repurposed; and Tranche 3 is where further buildings are to be purchased and developed (properties 6-9). The table in Section 4 sets out the proposed capacity to be developed in Kent.

6.2 Commissioned Places

6.2.1 New Reception Centre (Property 9): Following a procurement exercise in the Spring of 2023, a provider was appointed to provide accommodation for between 80 and 120 places, for 16- and 17-year-olds. A planning application is being submitted in relation to the provision which is being finalised at present. Due to the commissioned nature of the provision the planning application will be determined by the relevant District Council rather than KCC. Following a determination of the planning process, and subject to sufficient funding from the Home Office, the provision would then begin mobilisation.

6.2.2 Other Commissioned Provision: KCC commissions supported accommodation for UAS children/former UAS children aged between 16 and 19. This increases and decreases based on demand. The contract for the new service, requiring support for 16-17-year-olds, has recently been awarded to Clearsprings Ready Homes.

6.2.3 KCC also provides foster care including those commissioned from IFA's for newly arrived UAS children aged under 16. A block contract for independent fostering placements commenced on 1 April 2023 and has recently expanded to 15 placements. Further expansion of the block contract to 30 is currently being explored, subject to capacity in the market being available, and commissioning of other fostering placements will be made where possible to meet increases and decreases in demand.

6.2.4 KCC will continue to use existing supported accommodation providers for female UAS children aged 16–17-year-olds (please see Table at 4.3). Female UAS children arrive in much smaller numbers to male UAS children, so this provision should be sufficient. In the event large numbers of UAS female children arrive the Service will adapt its in children's homes and supported accommodation operations to safely provide accommodation to females.

6.3 Active Properties – Tranche 1 – Properties 1 and 2.

6.3.1 Works are being undertaken at the two active properties (1 and 2) to enable these two properties to continue accommodating the maximum number of children possible, and for one of these properties to be registered. For the property that was initially able to be registered, and which is procured through a service contract, the registration application was made in October 2023 to Ofsted. At the date of writing this report no further information is available in respect of the application.

- 6.3.2 As part of the registration there are some works that are required to ensure that the property can meet the registration requirements. Negotiations are currently underway in respect of the level of works that are required and the service contract. As a result, it will be necessary to update and potentially enter into new service contracts to support the delivery of ongoing services at the site. This may also include a waiver in recognition that the service is linked to the property.
- 6.3.3 Works have been progressed to enable the maximum occupancy at a second property which is currently operational. Ofsted will be invited back to the premises on completion of the works to consider whether it can be added to the Council's registered provision. If the property cannot be registered, it will not be able to be used to accommodate UAS children.
- 6.4 In House Provision – Current KCC properties - Tranche 2 (Properties 3-5)
- 6.4.1 In response to the court order KCC undertook a comprehensive exercise to look across its portfolio. To respond to the need outlined above, KCC commissioned a feasibility study process to identify potential sites in the following categories:
1. Vacant properties and sites owned by KCC.
 2. Occupied sites owned by KCC, which could be decanted to facilitate delivery of the project.
- 6.4.2 Site suitability was assessed using multiple factors including access, boundaries, neighbour matters, planning status and general suitability. Estates also undertook a due diligence check to identify any issues on the site which should be considered alongside the above criteria. A number of site visits were undertaken in August.
- 6.4.3 Following site visits, it was apparent that KCC's existing estate offers limited options for solutions. Most buildings require substantial capital works to bring them back to use, and/or require a potentially protracted Planning Application period. There are two sites (properties 3 and 4) which although required some works, have the correct planning use class. A third (property 5) was identified which, although it requires a planning application, has been used in the past as a residential care home for children. These three sites were taken forward to feasibility by a KCC contractor, procured through the KCC construction partnership framework. The three site options were shared with Ofsted, who confirmed that they felt that the three sites with the works were capable of being registered, either as supported accommodation or a children's home. The cost plans and programmes provided by the contractor have been reported to the Home Office and the DfE as part of the discussions to ensure all KCC's costs are covered.
- 6.4.4 Following the finalisation of a funding agreement in respect of these options it is proposed that the three sites are reallocated from the Council's disposal list to be used for operational purposes, to support this requirement for accommodation for UAS children. Operational plans and contracts will be implemented by the service and Infrastructure to enable the necessary construction works and ongoing running of these facilities. The capital grant agreement was finalised on the 8 December 2023 with the DfE, to secure funding for this work. To limit the impact of any delays in agreeing the grant agreements with the DfE, KCC contractors started enabling works on properties 4 and 5. This is however limited in scope pending any key decision which, if progressed, will enable the construction contracts to be finalised.

6.5 In House Provision - Acquisition Properties – Tranche 3 (properties 6, 7 and 8)

- 6.5.1 In order to meet the accommodation requirements, additional provision over and above that within KCC's existing portfolio is required. Work has been undertaken to identify properties with the correct planning designation, which could potentially meet the requirement. An assessment of a longlist of properties was undertaken which enabled a shortlist to be developed. Valuation assessments have been undertaken in relation to the shortlisted properties and discussions have been progressed with several landowners. Feasibility assessments have been carried out by KCC's contractor to inform the extent and costs of any fit out to deliver accommodation capable of being registered by Ofsted. Cost estimates have been shared with the Home Office and DfE as part of funding discussions.
- 6.5.2 Subject to the confirmation of funding from the Home Office, KCC is targeting an exchange and completion on the properties by the end of January 2024, with works starting thereafter. Acquisition due diligence is currently progressing in respect of properties 6, 7 and 8.

7. Service Provision

- 7.1 The Council's statutory responsibilities and regulatory standards for UAS children presenting within its borders cannot be met by property alone. To meet these obligations the Council requires a service, which can:
1. Swiftly assess the needs of UAS children when they first arrive to Kent before transporting them to age-appropriate Ofsted regulated accommodation.
 2. Robustly safeguard and support the well-being of UAS children in the Council's care until they move to the care of other local authorities under the NTS.
 3. Rely on the Home Office to consistently achieve timely and successful NTS transfers so safe accommodation placements can be made available for newly arriving children.
- 7.2 Since the High Court ruling the UAS Children's and Out of Hours (OOH) Services have adapted their social work operations to respond swiftly to newly arriving UAS children at the Kent Intake Unit (KIU) in Dover. The timeliness of these assessments is key to the welfare of children as KIU has limited space and no provision for children to remain longer than 24 hours. Due to children arriving at any time, the UAS Children's Services social workers operate at KIU between 8:30am and 10:00pm weekdays with a much smaller OOH presence between 10:00pm and 8:30am. Over weekends the OOH Service responds using a pool of social workers employed under permanent relief contracts, which it can stand up depending on the number of children arriving over a given weekend.
- 7.3 The number of children arriving, and the range of accommodation being used means it is not possible for each child to be transported to their accommodation by a social worker. The Home Office has a contract with a transport provider, which to date, the Home Office has allowed the Service to use to transport children from

the KIU to their accommodation where appropriate. Going forward the Council will require its own framework to provide timely transport of children from the KIU to their accommodation.

- 7.4 The transport requirement has two strands, relating to the transfer of UAS children from the KIU at Dover to the temporary accommodation in Kent (referred to as Part A) and subsequently to transport these UAS children from these locations to more permanent accommodation under the NTS (referred to as Part B).
- 7.5 Analysis of data for Part A shows approximately 700 journeys to transport children from the KIU to KCC accommodation, located across and outside of Kent, between August and October 2023. Whilst it is anticipated that with the new proposed accommodation these journeys will become more centralised, this will still require an operation with availability 24 hours a day, 365 years a year. Analysis of data for Part B shows approximately 800 journeys to transport UAS children from KCC accommodation to other local authorities under the NTS between June 2022 and June 2023. These journeys will operate within core business hours but will involve significant distances e.g., Scotland. Analysis of this data continues however, to date, the indicative cost for both Part A and B is in excess of £1.2m per year, which will need to be covered in full by the Government.
- 7.6 To provide the transport required, Public Transport will establish a sub-set of providers from KCC's current non-PSV (taxi) Framework under a separate UAS Child Transport Non-workload guarantee call off contract. This approach is approved by KCC Procurement. Providers appointed to this contract are assessed against criteria to ensure they have the right skill set, experience, and operational capacity to support the transport need. As existing suppliers to the Council, all will be familiar with the likely demands and meet legal, licensing, insurance, and other requirements. It is anticipated that around forty providers will form part of the UAS Child Transport contract.
- 7.7 Public Transport will need to establish a small team, comprising 1 Team Manager and 2 co-ordinators, to co-ordinate Part A and B transport requests during core business hours. The team will secure the best price for journeys through quotes submitted by the contracted providers. If a child requires transport outside of core business hours (Part A), the Out of Hours (OOH) Service will contact the contracted providers directly. Processes to control and substantiate costs and inform forecasting will be put in place and formally monitored and reported.
- 7.8 Once in the Council's care, each UAS child requires an allocated social worker to regularly visit them and co-ordinate a care plan for how the UAS child will be safeguarded and how their needs will be met. To be effective in this, social work teams must be separate from those assessing newly arriving UAS children at the KIU and the social workers require caseloads between 15-18 UAS children each. The UAS Children's Service continues to recruit managers, social workers and support staff to its social work teams, so there is an establishment of staff to safely and effectively meet the statutory responsibilities now and in the longer term.
- 7.9 UAS children are visited by social workers, foster carer and staff working in children's homes and supported accommodation are delegated responsibility for the day-to-day support to the UAS child. This includes responding to the UAS child's physical and emotional health needs, engaging the UAS child in a

programme of education and activities, and setting of rewards and sanctions for behaviour. For UAS children in existing reception centres, a weekly plan of lessons and activities and a key worker are provided to each UAS child. This is to support their well-being and development before their NTS transfer, or if they remain in Kent long-term, live safely and successfully in more independent community-based accommodation.

- 7.10 Existing reception centres have a structure of managers and support staff, which will be replicated in the proposed new accommodation, with all accommodation having the oversight of a registered service manager, with responsibility for ensuring regulatory standards are met. Staff in existing and new accommodation will need to be recruited, inducted, and trained to evidence continuing professional development. There is wider recruitment to the Council's Safeguarding, Professional Standards and Quality Assurance Service, which will increase the number of dedicated Independent Reviewing Officers and Professional Standards Officers, to support the Service to meet the regulatory standards for existing and proposed new accommodation.
- 7.11 The majority of newly arriving UAS children will only be in the Council's care temporarily, whilst they await their NTS transfer. This means it is difficult for UAS children to access services in the same way a citizen child might e.g., enrolment at their local school or college, access to advocacy services, legal advice, and mental health services. The Service is working with the Kent and Medway Integrated Care Board, Virtual Schools Kent, and Commissioning to tailor provision to UAS children accommodated in the existing and proposed new accommodation, so it can best meet their needs.
- 7.12 To consistently achieve timely and successful NTS transfers is a substantial undertaking, involving multiple transfers for UAS children to local authorities across the UK, taking place daily. Every UAS child has individual needs and circumstances that must be considered to ensure the transfer is in their best interests. Whilst the NTS transfers are mandated, each transfer can still require lengthy communication and negotiation with stakeholders to encourage timely and robust transfers. When an NTS transfer is confirmed, all operational arrangements need to be communicated with stakeholders. To be successful in this, the Service requires a dedicated operation to ensure every eligible UAS child is referred onto the NTS, to track progress of these referrals and co-ordinate escalation with stakeholders in the event of delay. This minimises the length of time the child waits for a transfer and in accommodation needed for newly arriving UAS children.

8. Financial Implications

- 8.1 Local authorities receive a grant from the Home Office to fund the costs associated with accommodating and caring for eligible UAS children (and former UAS children Care Leavers). The standard grant offer is £143 per child per night for all local authorities where the number of UAS children supported is equivalent to or above 0.1% of their child population.
- 8.2 Due to the unique circumstances of Kent, in terms of geography and scale, and in delivering an enhanced service for UAS children through the RSCS a separate funding agreement had been in place whereby, the Home Office funded both a

fixed amount, along with a rate per child per night above an agreed number, to ensure the costs of this bespoke service were fully recovered. This agreement was under review and subject to negotiation to increase the funding to reflect increased costs, at the time of the judgement on 27 July 2023, the result of which ended the existing RSCS protocol as this was considered unlawful. Estimates of the costs of delivering an expanded RSCS to accommodate every UAS child was provided to the Home Office and the DfE during August and September 2023 (revised as necessary following clarification requests). Extensive discussions have been held with both of the Central Government departments since then to reach an agreement to receive full funding for both recurring and one-off revenue and capital costs. The Council has been clear at every opportunity that the Council cannot be financially disadvantaged as a result of the judgment and that a funding agreement must reflect this to keep the Council “whole”.

8.3 On 8 September 2023 the Home Office and DfE issued a joint letter confirming an initial contribution totalling £9.75m in lieu of agreeing a final settlement. This included:

- £9.2m from the Home Office to help facilitate the Council to respond to immediate pressures and develop capacity to support children in the immediate term.
- £0.25m from the DfE for service improvement and transformation in relation to UAS children
- £0.3m from the Home Office to support the Council with implementation of supported accommodation reforms.

8.4 During October 2023, the Home Office and DfE confirmed the Council’s capital funding requirement would be shared between the two Government departments based on the DfE’s available funding. The DfE have since confirmed capital funding of up to £10.39m (relating to tranche 2 properties – see below). The provision of the capital funding required for tranches 1 and 3 properties is the responsibility of the Home Office. On 28 November 2023, the Home Office issued a formal funding offer for both capital and revenue funding. At the time of writing this report, discussions are still on-going with the Home Office to reach agreement for the rest of the revenue and capital funding required to ensure the Council’s costs both one-off and recurring are covered in full (as set out below).

8.5 Capital Costs

8.5.1 In order to bring accommodation forward as quickly as possible, it has been necessary to firm up the accommodation packages into tranches, based on the readiness to proceed and the level of control that KCC has in relation to delivering the accommodation solution. The first two tranches relate to those properties where KCC currently has a high level of control and are either operational at present or are properties in KCC’s ownership. The initial estimates the Council presented to the Home Office and DfE estimated a capital requirement range between £11m - £31m, and the estimates were updated in September 2023 based on more certainty in relation to tranches 1 and 2, with tranche 3 containing indicative estimates as this element was continuing to be developed. At this stage, the projected estimates are circa £34m, reflecting a higher requirement for the tranche 3 properties. Value for money assessments and cost review was

undertaken by KCC's cost consultant to assess the cost plans, which had been received by KCC's framework contractor and confirm that these were within expected ranges.

8.5.2 Following the agreement in principle of funding from the DfE for Tranche 2, KCC worked with the DfE to agree the grant terms to recognise that costs must be fully funded. This included the agreement of any clawback of funding and how the Council's asset value would be treated, given that these three properties would be redirected from the Councils disposal list for use as UAS child accommodation. The additional revenue costs associated with prudential borrowing to support the capital programme as a result of removing the three properties from the disposal list, were included as part of the revenue submissions to the Home Office.

8.5.3 A further update was given on the 1 December 2023 to the Home Office regarding Tranche 3, which had been developed through the course of October and November, based on valuation reports and a cost plan assessment from the Council's framework contractor. These have been reviewed by KCC's cost consultant. Indicative capital costs for this tranche of properties are £20.7m. At the end of November 2023, the Home Office confirmed funding in principle of £15m for tranche 3, which was based on the lower estimated funding range. It is understood that the Home Office are currently considering the grant agreement terms and are in discussion with HM Treasury regarding full funding of this tranche to enable all 3 required properties to be purchased. In the meantime, acquisition due diligence is progressing.

8.5.4 The estimated capital requirement for the current and next financial year is as follows:

Table 3: summary of estimated capital costs to develop suitable in-house services to support UAS children temporarily supported by KCC whilst waiting to be transferred to their destination local authority via the NTS.

Tranche	Estimated Capital Requirement 23/24	Estimated Capital Requirement 24/25	Estimated Total	Funding Position
Tranche 1 active Properties (Properties 1 and 2)	£1.8m	£0	£1.8m	£1.8m funding in principle proposed by Home Office – Grant letter not yet issued
Tranche 2 KCC properties (Properties 3,4 and 5)	£6.4m	£3.99m	£10.39m	£10.39m DfE grant agreement received 8.12.23
Tranche 3 Non KCC properties (Properties 6, 7 and 8) *	£17.04m	£3.7m	£20.74m	£15m funding in principle proposed by Home Office – Grant letter not yet issued. Discussions ongoing re full

				funding requirement.
Total	£25.24m	£7.69m	£32.93m	

8.6. Revenue Costs

8.6.1 The initial estimates presented to the Home Office and DfE indicated a revenue requirement of £20m - £23m for 2023-24, and a possible ongoing requirement of around £50m - £60m to deliver up to around 400 places from an expanded RSCS. If the number of UAS children requiring support exceed this capacity level it is estimated that the Council's costs would range between £2k to £4k per additional UAS child per week for externally commissioned placements (as set out in the table below). As the Service develops their final solutions based on the available accommodation it is expected these costs will change. The funding for estimated revenue costs is still to be agreed with the Home Office. The initial offer of £9.2m from the Home Office was based upon the assumption that the average cost of providing 120 places (the number of places provided through the previous could be used as an approximate per child per night cost for expanding the service. Both the overall quantum and funding model are currently under discussion with the Home Office, to ensure the Council is not financially disadvantaged and to mitigate the financial risk to the Council of fluctuating numbers of UAS children requiring accommodation.

8.6.2 Table 4: summary of estimated revenue costs to develop suitable in-house services to support UAS children temporarily supported by KCC whilst waiting to be transferred to their destination local authority via the NTS.

Costs	Estimated Revenue Costs 23-24 £m	Estimated Annual Revenue Costs 24-25 onwards £m	Description
Current Facilities	6.1	3.6 – 3.9	Care and accommodation costs
New Facilities	1.8	29.8 – 32.5	Care and accommodation costs for in-house and commissioned properties
Other Accommodation	3.9	5.1 – 5.6	Placement costs for block contracts
Social Work & Support Functions	5.7 – 6.3	7.0 – 9.2	Social workers, support and Quality Assurance Services
Central Support Services	0.8 – 1.2	1.2 – 1.9	Placement service, finance, management information, strategic management
Contingency	2.0 – 4.0	3.0 – 6.0	For as yet unquantified costs including transport, additional site security, opportunity cost of using KCC buildings etc.
Total Day to Day Costs	20.3 – 23.3	49.7 – 59.1	
No of Places	120 up to 340	390	

£2k to £4k per UAS child accommodation above the capacity available

9. Risks

- 9.1 There are a number of significant risks relating to the forecast and actual UAS child arrivals to Kent, the operation of the NTS and the ability to meet the operational requirements of the Service.
- 9.2 If the number of UAS children estimated to arrive in 2024 is less than the average forecast in the modelling, the proposed infrastructure and services will be underused which will increase the unit cost as fixed costs will be incurred even with lower than planned for numbers. This risk is mitigated as long as the Home Office commit to fund KCC's fixed costs to maintain placements and services during low demand periods.
- 9.3 If the number of UAS children estimated to arrive in 2024 is greater than the average forecast in the modelling, the proposed infrastructure and services will be unable to meet the Council's statutory and regulatory responsibilities to newly arriving UAS children. This risk will be mitigated by securing additional placements from the external market, although these are expected to be at a significantly higher cost.
- 9.4 If the number of UAS children moving to the care of other local authorities under the NTS is slower than that forecast in the modelling and/or the number of UAS children estimated to arrive in Kent is greater than the average forecast, there is a significant risk that the proposed infrastructure and services would be unable to meet the Council's statutory and regulatory responsibilities to newly arriving UAS children in a way that is safe and complies with the Council's other statutory duties (including under the Children Act 2004). This will be mitigated by securing additional placements from the external market, although these are expected to be at a significantly higher cost.
- 9.5 If the number of UAS children moving to the care of other local authorities under the NTS is faster than that forecast in the modelling, and/or the number of UAS children estimated to arrive is less than the average forecast, the proposed infrastructure and services will be underused which will increase the unit cost as fixed costs will be incurred even with lower than planned for numbers. This risk is mitigated as long as the Home Office commit to fund KCC's fixed costs to maintain placements and services during low demand periods.
- 9.6 Delays in the proposed new accommodation being operational and being unable to secure sufficient externally commissioned placements could lead to continued or increased use of accommodation not regulated by Ofsted. Particularly if the number of children estimated to arrive in 2024 is greater than the average forecast. This risks the Council being unable to meet its statutory and regulatory responsibilities to newly arriving children in a way that is safe and lawful. This will be mitigated by securing additional placements from the external market, although these are expected to be at a significantly higher cost.

- 9.7 If recruitment of staff and services does not keep pace with infrastructure projects, or vice versa, the proposed infrastructure will either be underused due to a lack of staff or services for it to function, or staff and services will be a cost incurred without infrastructure to operate from. It is intended that this will be mitigated by having a mix of core and agency staff and by securing additional placements from the external market, although these are subject to resource being available and is expected to be at a significantly higher cost.
- 9.8 There may be greater public, political and media scrutiny at spending on infrastructure and services for UAS children at a time when spend on infrastructure and services across the Council is being reviewed and reduced as part of a financial recovery plan. This will be mitigated as far as possible by ensuring that the Council's costs are covered in full, so that it is not financially disadvantaged as a result of providing a Service which other local authorities do not have, and clearly communicating that the costs are met in full by Government grant.
- 9.9 If the capital Funding received from Central Government is insufficient to meet the costs required to develop and deliver the planned number of places, resulting in a reduction in the number of places delivered towards the core offer (and therefore a greater reliance on the external market with associated risk sets out above) or the Council is required to fund the shortfall within existing resources to meet statutory requirements, this will pose a major threat to the Council's financial sustainability. To mitigate this as far as possible KCC has an external cost surveyor who has reviewed contractor cost plans based on lump sum build contracts to transfer the maximum cost risk to the Contractor. Grant agreements for Tranche 2 have been negotiated with the DFE which ensure that change control mechanisms are in place should the cost profile change. KCC will seek to ensure any further grant agreements relating to either capital or revenue funding make clear that no costs will fall to KCC.
- 9.10 If funding for day-to-day costs (revenue costs) received from Government is insufficient to cover the full costs of meeting statutory duties in relation to the judgement and therefore either the Council fails to meet its statutory duties in relation to all UAS children arriving in Kent or the Council has to fund the shortfall from existing resources, this will pose a major threat to the Council's financial sustainability.
- 9.11 The assumptions made in estimating the costs of delivering a service at this scale may have been underestimated. For example: unknown additional costs arise, the Service is unable to employ permanent staff and so has greater reliance on more costly agency staff, high costs of externally funded placements. To mitigate against this, a contingency has been included in the estimated funding required, however this is entirely dependent on what is contained within a final funding offer from the Home Office. Therefore, if sufficient funding is not provided, the Council will either not be able to safely deliver the services and so not meet its statutory duties, or the Council will have to fund the shortfall through existing resources, which will pose a major threat to the Council's financial sustainability.
- 9.12 If the funding model from Central Government does not adequately protect KCC financially from volatility in demand, the council will either rely on higher cost short-term solutions, where there are inherent risks that there will be either insufficient

resources available in the external market or necessary experience to meet statutory duties adequately or the Council will have to fund the shortfall through existing resources, which will pose a major threat to the Council's financial sustainability.

10. Equalities implications

- 10.1 An Equalities Impact Assessment (EQIA) has been undertaken and no negative impacts have been identified. The EQIA will continue to be developed and reviewed as this project progresses.

11. Governance and Legal

- 11.1 Legal advice has been provided by Bevan Brittan LLP as procured by General Counsel in relation to the ongoing litigation. The Exempt Appendix A sets out further legal considerations.
- 11.2 This decision sets out the Executive Policy choice to take steps to secure the required UASC accommodation and establish relevant service provision to meet statutory obligations. The decision is necessary to provide authority for the mobilisation of significant resource and council activity toward delivering an expanded service in this area, so as to comply with legal duties arising under statutory obligation and court judgements.
- 11.3 The financial implications exceed £1m, albeit with all costs expected to be reimbursed in full by Government. The costs represent substantial service development, including expanding the estate requirements for the service, which has implications for properties currently marked for disposal. The decision confirms the policy requirement to direct the relevant KCC resources to support the policy objective to ensure sufficient accommodation and support is in place to meet legal requirements.
- 11.4 The operational activity required under the decision, including the management and instruction of works to make properties fit for purpose, and the development and implementation of the required UAS child service provision to provide appropriate support to this vulnerable group, will be progressed via delegated authority as set out in the decision.
- 11.5 The scale of the activity approved is detailed in the report and authority to implement is limited to the level determined by the policy position, ensuring KCC compliance with the court orders and its statutory obligations. Should the level of works and support change to a substantive degree beyond the core policy decision to meet legal requirements, or funding should cease to become available from Central Government or is insufficient to fund this activity, further decisions progressed through normal governance would be required to confirm the revised policy and expenditure choices by the Executive.

12. Reason for Urgency

- 11.1 In order to comply with its statutory duties and the most recent requirements confirmed by the courts, the Council must continue to move at pace to secure the additional UAS Child accommodation and put relevant service provision in place. In addition, it is in the interests of the relevant UAS children to have access to regulated accommodation and support being arranged by this decision as quickly as possible.
- 11.2 The first part of the capital funding package has been agreed by the DfE on the 8 December 2023 and in order to deliver the service accommodation requirement to meet its statutory duties, KCC must enter into contracts as soon as possible to enable the necessary works to be completed. , so that new capacity is brought on stream quickly (and to meet expected demand in spring/summer 2024). As other funding arrangements are confirmed it will be necessary to progress at pace.
- 11.3 It is therefore necessary to progress the decision via urgency procedures as the alternative would involve a significant delay of between 2 and 6 weeks, reducing KCC's ability to comply with legal requirements as set out in this report and putting it at risk of breaching its duties when larger numbers of UAS children arrive in the spring.
- 11.4 Due to the constantly changing situation with regards to various Court proceedings and negotiations over funding, it has not been possible to take this decision via KCC's normal governance route.
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Recommendation(s):

The Cabinet Member **for Integrated Children Services is asked to:**

- a) **APPROVE** the policy approach to securing and delivering additional accommodation and support for UAS children, as detailed in the report;
- b) **CONFIRM** the revised property and infrastructure requirements for the service in light of the updated UAS children Accommodation approach;
- c) **NOTE** the current position and the measures already taken by the Council.
- d) **NOTE** that the capital costs and operating costs are expected to be reimbursed by Central Government;
- e) **DELEGATE** authority to the Corporate Director of Children, Young People and Education to take required actions, including but not limited to agreeing funding arrangements in consultation with the Corporate Director of Finance and entering into contracts or other legal agreements and undertaking relevant service review or redesign, to establish and enter operational arrangements both in relation to existing and new arrangements, as noted in the report, to implement the policy decision and ensure lawful compliance of the Councils statutory duties relating to UAS children service provision; and
- f) **DELEGATE** authority to the Director of Infrastructure to, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services

and the Corporate Director for Children, Young People and Education, implement the relevant building works, finalise and enter into necessary contracts, funding or other legal agreements (including the completion of land transfers and acquisitions), and reallocate properties from the disposal list, to implement this decision.

13. Appendices:

- 13.1 Appendix A – Exempt Appendix
- 13.2 Appendix B – Published Equality Impact Assessment (EqIA)

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