

## KENT COUNTY COUNCIL

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### CABINET SCRUTINY COMMITTEE

MINUTES of a meeting of the Cabinet Scrutiny Committee held at Sessions House, County Hall, Maidstone on Wednesday, 24 October 2007.

PRESENT: Dr M R Eddy (Chairman), Mr D Smyth (Vice-Chairman), Mr A R Bassam, Mr A H T Bowles, Mr J R Bullock MBE, Miss S J Carey, Mr B R Cope, Mrs T Dean, Mr M J Fittock (substitute for Mrs M Newell), Mr C Hart, Mr C Hibbard (substitute for Mr J E Scholes), Mr G A Horne MBE, Mr E C C Hotson, Mr P W A Lake, Mr C J Law, Mr M Northey (substitute for Mr A R Chell), Mrs E Rowbotham (substitute for Mr R Truelove), and Mrs P A V Stockell.

IN ATTENDANCE: Mr J Wale, Assistant to the Chief Executive and Mr P D Wickenden, Overview and Scrutiny Manager.

#### UNRESTRICTED ITEMS

**23. Minutes – 26 September 2007**  
*(Item A3)*

RESOLVED that the Minutes of the meeting held on 26 September 2007 are correctly recorded and that they be signed by the Chairman.

**24. Matters Arising**

(1) On Minute 21, the Chairman informed the Committee that a press release on the changes to domiciliary care charges published following the last meeting of the Committee was withdrawn as it did not reflect the Committee's deliberations and two further press releases were produced.

(2) On Minute 20, Mr Fittock expressed concern that the press release relating to the Future of Post Office Network and Services in Kent referred to the word "scrutinise" which he was not sure was the role of Cabinet.

(3) Mr Law informed the Committee of the process since the Cabinet were made aware of the proposals in July to the formal announcement of Future of Post Office Network and Services in Kent published on 2 October 2007.

**25. Informal Member Group on Budgetary Issues – 26 September and 11 October 2007**  
*(Item A4)*

(1) RESOLVED that the notes of the meetings of the Informal Member Group on Budgetary Issues held on 26 September and 11 October 2007 be noted.

### *Matters Arising*

(2) Mr Smyth, Vice-Chairman of the Informal Member Group, informed the Committee that the IMG on Budgetary Issues would be keeping a close eye on the issue of Direct Payments and their administrative costs.

(3) Mrs Dean expressed her disappointment that it would be difficult to calculate how the back-office costs relating to Direct Payments compared to those relating to the provision of a traditional care service. Mrs Dean indicated that it was important in her view that these comparative costs were provided.

### **26. Informal Member Group on Kent Highway Services' Business Plan – 3 October 2007** *(Item A5)*

(1) RESOLVED that the notes of the meeting of the Informal Member Group on Kent Highway Services' Business Plan held on 3 October 2007 be noted.

### *Matters Arising*

(2) Mr Hart raised concern at the lack of detail in the Business Plan and the correlation with the operation of Kent Highway Services.

(3) The Committee asked that the Director of Kent Highway Services be asked to provide information on the new structure and staffing as soon as possible. This information would be made available to the Informal Member Group and also to all Members of the Cabinet Scrutiny Committee.

(4) The Committee acknowledged that for the Business Plan 2008/09 it was important to have the views of the new Managing Director for Environment and Regeneration.

(5) Mrs Dean commented that whilst evidence within the Plan suggested performance was improving, anecdotal evidence from Parish Councils in her area was the opposite. She stressed that information from annual questionnaires sent to Parish Councils needed to be quantitative as well as qualitative. For example, it would be useful to display in the spreadsheet how many outstanding repairs there were together with an indication of how long it had taken to get those outstanding repairs actually repaired.

(6) Mr Law referred to the Kent Highway Services Alliance and commented that there was provision to monitor against a wide range of best value performance indicators and to compare complaints against jobs completed. Mr Bullock added that the list of faults needed to refer to non-parished areas as well as those with Parish Councils.

(7) In response to a question relating to the relationship between the Joint Transportation Board, the Highways Advisory Board, the Environment and Regeneration Policy Overview Committee, and the Cabinet Scrutiny Committee, the Overview and Scrutiny Manager informed the Committee that he had been asked to look at this as an outstanding issue by the Leader of the Council.

(8) Mr Hart asked for confirmation of the first meeting of the newly reconvened Thanet Joint Transportation Board which had not met since April 2007.

**27. Cabinet Scrutiny Committee – Standing Report to October 2007**

*(Item A6 – Report by Assistant to the Chief Executive)*

(1) RESOLVED that the report on the actions taken as a result of the Committee's decisions at previous meetings, and the updated report on progress with Select Committee Topic Reviews, be noted.

*Matter Arising – Select Committee report on Accessing Democracy*

(2) In response to a question on whether the Accessing Democracy Select Committee was to commence in Autumn 2007, the Overview and Scrutiny Manager informed the Committee that the Policy Overview Co-ordinating Committee at its meeting on 5 November 2007 would be asked to reaffirm this topic as its next priority for review. Resources to support this review had already been identified.

**28. Proposed Additional Meeting – April 2008**

*(Item A7)*

Members noted that Wednesday 23 April 2008 at 10.00 am had been reserved for a possible additional meeting of the Committee should it be needed following the additional Cabinet meeting, arranged for 14 April 2008, which had been established to consider Directorate Business Plans for 2008/09.

**29. Clostridium Difficile Outbreaks at Maidstone & Tunbridge Wells NHS Hospitals Trust – Report by the Healthcare Commission**

*(Item C1)*

*(Dr M R Eddy indicated that he was no longer a non-executive director of the Strategic Health Authority having given up that appointment some two years previous)*

*(Mr P W A Lake declared that he was a non-executive director of the Kent and Medway Social Care Partnership Trust)*

(1) Mr A J King, Deputy Leader of the Council, (in the Leader's absence); Mr G Gibbens, Cabinet Member for Public Health; Ms M Peachey, Director of Public Health, Chief Executive's Directorate; and Ms L McMullan, County Finance Officer, Chief Executive's Directorate, were in attendance for this item.

(2) The Chairman informed the Committee that the urgent report to Cabinet on 15 October had been called before the Committee for scrutiny with a view to:-

- (a) obtaining more details of the likely cost to the County Council of the Cabinet's decisions and how they are to be funded;
- (b) to examine how the proposed "healthwatch" is intended to work and, in particular, how it will relate to KCC's NHS Overview and Scrutiny Committee and to the Independent Local Involvement Network for Health and Social Care which the County Council will be required to establish from 1 April 2008 under the proposals contained within the Local Government and Public Involvement in Health Bill.

(3) The Committee had before them the draft decision of the Cabinet which was as follows:-

- “1 AGREED the Leader and Chief Executive be authorised to negotiate with NHS colleagues a package of measures through which the County Council can help provide public reassurance on long-term improvement;
- 2 APPROVED the setting up as soon as possible of a local “healthwatch” which provides the public an independent route for registering concerns about their local Health services.”

(4) To assist the Committee in the scrutiny of this item, the Committee had a background note on NHS Scrutiny Patient and Public Involvement and complaints mechanisms. Tabled at the meeting was a table setting out the Auditor’s Local Evaluation scores for NHS Trusts in Kent and Medway for 2006/07, together with the Department of Health final outturn figures for 2006/07.

(5) The Chairman informed the Committee that the NHS Overview and Scrutiny Committee would be looking at the issue of clostridium difficile outbreaks in Maidstone & Tunbridge Wells NHS Hospitals Trust when they met on 9 November 2007. The Overview and Scrutiny Manager explained that the meeting of the NHS Overview and Scrutiny Committee on 9 November was not purely about clostridium difficile but was about the whole issue of infection control and how this is tackled by the acute Hospital Trusts across Kent and Medway.

(6) The Committee noted that the recommendation in the Cabinet report with regard to “healthwatch” was to undertake a feasibility study, whereas the draft minutes of the Cabinet deliberations was approval to the setting up as soon as possible of a local Healthwatch which provides the public with an independent route for registering concerns about their local health services.

*Package of Measures Including Offer of £5m Loan*

(7) Mr King informed the Committee that the decision to bring forward an urgent paper to Cabinet on 15 October was intended to create a position where the County Council were supporting the Maidstone & Tunbridge Wells NHS Trust. It was also intended to demonstrate the County Council’s confidence on the way forward and to offer support to the Health Trust to assist them to put things right. He added that he regretted that both Dr Eddy and Mrs Dean, who had been invited to attend the Cabinet meeting, had been unable to attend.

(8) He said this was not a political issue, it was an issue of public confidence in the way we move forward. Mr King informed the Committee that the Interim Chief Executive of the Maidstone & Tunbridge Wells, Mr Glenn Douglas, had attended the Cabinet meeting on 15 October 2007 and had taken part in the discussions of the Cabinet meeting. He added that the Chairman of the Maidstone and Tunbridge Wells NHS Trust, Mr Lee, had resigned the previous week and on 23 October a new Interim Chairman had been appointed, Mr Jenkins, who is currently Chairman of the East Kent Hospitals Trust.

(9) Mr King reaffirmed that the Cabinet were keen to offer what help they could to assist the Maidstone & Tunbridge Wells NHS Trust. No detailed discussions had taken place either by the collective Cabinet or through individual Cabinet Member decisions.

On the offer of a £5m loan, he added that if Maidstone & Tunbridge Wells NHS Trust had Foundation Trust status then making a loan to a Foundation Trust would be straightforward. However, with regard to a loan to a Health organisation without Foundation Trust status he said that this may require the approval of the Secretary of State for Health. He added that the West Kent Primary Care Trust and the Maidstone & Tunbridge Wells NHS Trust were looking at a package of measures and the offer of support from the County Council was in the spirit of support and public confidence. The offer had been made on the understanding there would be no impediment to the County Council.

(10) Mr King informed the Committee that Mr Lynes and he had visited Kent & Sussex and Pembury Hospitals on Monday 22 October 2007. During those visits the indication was that the loan offer made by the County Council had been well received by the staff.

(11) The Chairman indicated that any decision to make a loan would have to come before the Cabinet Scrutiny Committee because it would be a deviation from the budget. He then asked whether there had been any discussions with the Chief Executive and Chairman of the West Kent Primary Care Trust. Mr King responded and apologised for leaving this out of his initial response, but the Chief Executive, Peter Gilroy, was in the process of engaging both the Chief Executive of the West Kent Primary Care Trust and the Maidstone & Tunbridge Wells NHS Trust with respect to a number of specific questions relating to: the £5m loan, including:-

- (a) its legality;
- (b) the terms and conditions which would be attached to the loan;
- (c) would the money come from reserves or elsewhere;
- (d) would it be interest free;
- (e) what impact might a loan have on the County Council's revenue budget;  
and
- (f) what the loan would be used for?

were responded to as follows.

Mr King informed the Committee that the loan was an offer in principle. It would probably be drawn from the reserves which currently stood at £26m. Mr King added, as a loan it would be repayable.

(12) Ms McMullan said that provision for the loan would either be from general reserves or existing budgets. At this stage it was not known what Health would want the loan for and therefore whether it would be capital or revenue. Before any loan is made the County Council would ensure that the loan is quite secure. This would follow advice taken from the Audit Commission, the Health bodies auditors, and our own auditors, PricewaterhouseCoopers. Ms McMullan confirmed that, given the level of general reserves at £26m, if terms and conditions for repayment of the loan could be agreed, she would be comfortable in a loan being made.

(13) In response to a question would a £5m loan put restraints on the County Council doing other things, ie in Social Services for example, bearing in mind difficulties in the past, eg the 1999/2000 budget overspend, Ms McMullan responded there was greater robustness in finance strategy and planning when setting the budget. She added that the County Council was now better prepared than when the overspend occurred in 1999/2000. If the loan was made it would still leave £21m of general reserves available.

(14) Mr King added that the reserves were not generous but they were better than they were ten years ago. What the County Council was doing was demonstrating its well-being and leadership role. He wanted to take action now rather than waiting for what might be a bureaucratic process if approaching the Department of Health, Richmond House, London. He added hospital boards and other health organisations were not subject to democratic scrutiny as local government is.

(15) In response to a series of questions as to:-

- (a) why an offer of £5m loan had been made and not £½ m, £2m, £3m, or £8m;
- (b) who the offer was made to; and
- (c) why should it result in other parts of the County funding one particular area of the County?

Mr Gibbens responded that it was important that the County Council and the County Council's Cabinet demonstrated their willingness to help and support all Kent residents across the whole of Kent. Mr King added it was a matter of public confidence, what had been offered was a loan. There would be appropriate terms and conditions attached to the loan. The Committee had been informed that reserves were adequate if the loan was to be made. There was the potential impact on other services, eg adult social care. It was therefore important that the whole of the Health Service in the Kent Health economy was strong. It was hoped to restore public confidence across the whole of Kent but in particular for those people who look to the Maidstone & Tunbridge Wells NHS Trust for their services.

(16) Responding to a series of questions:-

- (a) was it the right package;
- (b) how was the package arrived at;
- (c) was the package agreed with Mr Douglas, the Interim Chief Executive of the Maidstone & Tunbridge Wells NHS Trust, and was the Chairman of the NHS Overview and Scrutiny Committee aware of the package being offered?

Mr King responded that the NHS Overview and Scrutiny Committee Chairman had not been consulted. During a series of conversations at County Hall between officers, the Leader and Chief Executive during Thursday 11 and Friday 12 October, the Cabinet recognised immediately that this was an issue of public confidence. The Chief Executive and Leader recognised that Maidstone & Tunbridge Wells NHS Trust would need some considerable support. The Leader then reported to Cabinet on 15 October.

(17) Ms Peachey added that the West Kent Primary Care Trust had been contacted on the Thursday and Friday and the offer of support had been welcomed by the Primary Care Trust. Mr Phoenix, Chief Executive of the Primary Care Trust, had discussed the offer of support with Board Members of the Primary Care Trust and this was welcomed by the Board.

(18) Mr Gibbens informed the Committee that the Chief Executive of the Primary Care Trust, Mr Steve Phoenix, and the interim Chief Executive of the Maidstone & Tunbridge Wells NHS Trust, Mr Glenn Douglas, were present at the Cabinet meeting.

(19) One Member said that the offer of the loan had not therefore been agreed by the Health bodies. In addition, it had just been acknowledged that the Maidstone & Tunbridge Wells NHS Hospitals Trust and its Board were weak in the use of its resources.

(20) The Chairman referred Members to the press release. Mr Gibbens reaffirmed again that discussions over the £5m loan offer were ongoing. Mr King added that it was important not to conduct the negotiation with the Cabinet Scrutiny Committee. The issue was a matter of public confidence and the County Council were seeking to restore public confidence in the Health Service.

(21) Asked whether there was any risk in making a £5m loan, Ms McMullan responded that she would not recommend to the County Council making a loan if she felt there was any risk.

(22) Asked whether the County Council had received advice on the overall financial position of the Maidstone & Tunbridge Wells NHS Hospitals Trust, bearing in mind Maidstone Borough Council had five years ago raised similar concerns, Mr King answered by informing the Cabinet Scrutiny Committee of the latest advice on which further clarification was being sought about the underlying deficit of the Maidstone & Tunbridge Wells NHS Hospitals Trust of £17m which had been set aside. Asked whether the fact that Mr King had just given to the Committee was a material factor and part of the decision-making process before the £5m offer of a loan was made, the response was it was not a material factor.

(23) In response to a question from about the recent Audit Commission report and how funding surpluses were made available to hospital trusts across the UK and whether that funding would help to restore confidence in respective trusts, Mr King said that that this was a matter for the Department of Health and he could not comment further.

(24) Asked why the Healthcare Commission report on the investigation into the outbreaks of Clostridium Difficile in the Maidstone & Tunbridge Wells NHS Hospitals Trust which it was understood had been available in May/June of this year had only just been published, Mr King said that he felt that this was not constructive. However, it was a matter for the County Council's Health Overview and Scrutiny Committee.

(25) Asked whether it would have been wiser to spend money on delayed discharge, Mr Gibbens responded that he would respond to this question outside of the meeting.

(26) In answer to a question if the loan was made would it be subject to contract and collateral security, Ms McMullan responded that it would be a legal contract but it was not possible to put a charge on the Crown Estate.

(27) One Member of the Committee expressed the view that he did not expect the National Health Service to accept the loan.

(28) Mr King was congratulated by a Member in defending the indefensible. In responding to a question whether a loan would have an impact on the County Council's revenue budget, Ms McMullan acknowledged that there would be an impact on the revenue budget if the County Council did not cover the marginal costs.

(29) Asked:-

- (a) why there had to be such a bold public announcement; and
- (b) whether there was a need for additional funding?

The Member asking the question expressed the view that it was a sense of a real political announcement "a knee-jerk reaction" – "gesture politics".

Mr Gibbens initially responded saying it was not a political decision, it was about reassuring the people across Kent. A series of negotiations were now being undertaken. Mr King added he did not expect to get accused of political advantage. He said there was an obligation on all of us. The Healthcare Commission report into the investigation of outbreaks in Clostridium Difficile at Maidstone & Tunbridge Wells NHS Hospital Trust was a shocking document and it was important that a contribution was made by the County Council to restore public confidence. He added that the County Council's Cabinet/Council would not stand idly by. It would denounce the County Council if the County Council were not taking the situation seriously. This was not a political issue. Mr Gibbens added that doing nothing as a County Council to respond to the Healthcare Commission report was not an option.

(30) One Member expressed the view that he felt that there was a better way that the issue could have been tackled in making its offer rather than publicly announcing a £5m loan. Mr King said that he had listened very carefully, but he was surprised that what the Member was suggesting would have had the same impact. The offer of a £5m loan was judged to be an amount to put forward without presenting a high risk. The judgement was designed to provide:-

- (a) a life-line to the Trust; and
- (b) demonstrate that the County Council were trying to help to resolve a difficult situation.

He said that the accusation that it was a political decision demeaned the County Council.

(31) Asked how long the loan would remain on the table, Mr Gibbens responded that the County Council were still in the process of negotiation and these discussions would continue and the outcomes made public.

#### *Kent Healthwatch*

(32) Dr Eddy referred to the press release which referred to the setting up of an independent Healthwatch as a precursor to the Local Involvement Networks (LINK) which were soon to be established. He asked what was intended by the press release



when it referred to the word “independent”. He added that there were differences between the criterion under which Health operated to that of Social Care and as a result he questioned whether the County Council would be establishing a body which was solely independent. The response from the Cabinet Members was that there was a working group of officers looking at all those issues.

(33) In response to a question as to why the recommendation to the Cabinet on 15 October 2007 was to “approve a feasibility study for setting up a local “Healthwatch” which provide the public an independent route for registering concerns about their local Health services”, had changed in the draft minute to approve the setting up as soon as possible of a local “Healthwatch” which provides the public an independent route for registering concerns about their local Health services and what had happened to the feasibility study, Mr Gibbens said there were no proposals and no details about the local Healthwatch. Cabinet were keen to look at restoring public confidence. He said it was about listening to patient and public concerns which he felt was not part of the current Patient and Public Involvement Fora or the soon to be created Local Involvement Networks.

(34) A Member asked who the group of officers were looking at Healthwatch, Mr King said there was a small group of officers being led by the Chief Executive and a member of the Chief Executive’s staff with senior Members and officers of the Health Overview and Scrutiny Committee. He added that it did include the Director of Trading Standards.

(35) A Member stated that what was being proposed to be established was an independent complaints body, in advance of a Local Involvement Network being established, where the people would not be medically qualified. Asked whether there was any realistic chance of this happening in the next three months prior to the Local Involvement Network being established in April 2008, Mr Gibbens responded that the Local Involvement Network would include the local Healthwatch but there were currently no proposals available.

(36) Responding to a question about the arrangements being made for promoting the tender document amongst Health and Health and Social Care to establish the Local Involvement Network by 1 April 2008, Mr Gibbens said that this would be an open tender document.

(37) Asked why the same name was being used as had been put forward in the Conservative Group’s manifesto in 2005 which was eventually abandoned, Mr Gibbens responded that the Healthwatch was a working title. An independent Healthwatch would have to be compatible with the Local Involvement Network.

(38) Asked whether Healthwatch would happen before the Local Involvement Networks are established, Mr Gibbens responded yes by the end of the year.

(39) One Member spoke about the interrelationship between the former Community Health Councils which were replaced by Patient and Public Involvement Forums, and their relationships with the Patient Advisory Liaison Service, and the Independent Complaints Advisory Service, etc. The Member suggested that the County Council should be challenging the Government because no patient and public voice organisations had the opportunity to “bed down” before it was replaced. Mr Gibbens responded that work was ongoing to establish a Local Involvement Network which was appropriate for Kent. This work would include a number of public engagement events and was a great opportunity for the County Council to explore how it can work most

effectively with Primary Care Trusts, Borough and District Councils, across the Health and Social Care agenda, etc.

(40) In answer to a question about the compatibility with the Local Involvement Network to be established and whether there would be an ongoing role for a local "Healthwatch" after the Local Involvement Network is established, Mr Gibbens said that it was quite possible that something would continue after the Local Involvement Network had been established.

(41) One Member said that he did not feel that the press release inspired confidence and asked whether it was the County Council's role to secure the host organisation for the Local Involvement Network. He also asked what a Councillors' role would be and what the interrelationship would be with the Government's proposals for Community Calls for Actions. Mr Gibbens responded that it would be for the County Council to put out a tender to secure a host organisation for managing the Local Involvement Network. It was important that people across the County had a voice. Mr Gibbens added that it was increasing the ways of providing the public with the means of making their concerns known.

(42) Asked whether:-

- (a) Healthwatch was intended to be a Health and Social Care Watch because LINKs when established related to health and social care; and
- (b) the County Council were putting money into something it should not when there was a Patient Advisory Liaison Service;

Mr Gibbens acknowledged that the points were well made but what was being proposed was something that would be compatible with the Local Involvement Network.

### *Conclusions*

(43) The Committee then debated at length what it had heard in response to the questions put to Mr King, Mr Gibbens, Ms McMullan and Ms Peachy. The Committee unanimously RESOLVED that:-

- (a) Mr King, Mr Gibbens, Ms McMullan and Ms Peachy be thanked for attending the meeting to answer Members' questions;
- (b) the commitment of Cabinet to support the Maidstone & Tunbridge Wells NHS Hospitals Trust is to be commended but the pledge of support could have been improved if there had been more detailed discussions with the Health bodies on an agreed package of support prior to the announcement being made;

and by a majority (12 votes to 3)

- (c) Cabinet be recommended to make every effort to establish the Local Involvement Network (LINK) for Kent by 1 April 2008, or before, rather than establishing any other non-statutory fora such as a "Healthwatch".