

KENT COUNTY COUNCIL

CABINET

MINUTES of a meeting of the Cabinet held in the Darent Room, Sessions House, County Hall, Maidstone on Monday, 18 March 2013.

PRESENT: Mr P B Carter (Chairman), Mr M C Dance, Mr G K Gibbens, Mr R W Gough, Mr P M Hill, OBE, Mr A J King, MBE, Mr J D Simmonds, Mr B J Sweetland, Mr M J Whiting and Mrs J Whittle

ALSO PRESENT: Richard Fitzgerald, Performance Manager, Business Strategy and Support

IN ATTENDANCE: Mr D Cockburn (Corporate Director of Business Strategy and Support), Mr M Austerberry (Corporate Director, Environment and Enterprise), Mrs A Beer (Corporate Director of Human Resources), Mr M Burrows, (Director of Consultation and Communications), Mr A Wood (Corporate Director of Finance and Procurement), Mr P Leeson (Corporate Director Education, Learning and Skills Directorate), Ms A Honey (Corporate Director, Customer and Communities), Ms Mairead MacNeil (Director of Specialist Children's Services, substituting for the Corporate Director, Families and Social Care), Mrs Meredin Peachey (Kent Director Of Public Health), Mr G Wild (Director of Governance and Law) and Mrs L Whitaker (Democratic Services)

UNRESTRICTED ITEMS

38. Apologies

(Item 2)

Apologies were received from Andrew Ireland, Corporate Director of Families and Social Care. Mairead MacNeil was in attendance as his substitute.

39. Declarations of Interests on items on the agenda

(Item 3)

No declarations of interest were received.

40. Minutes of the Meeting held on 25 February 2013

(Item 4)

The minutes of the meeting held on 25 February 2013 were agreed and signed by the Chairman as a true record.

41. Items which the Chairman decides are relevant or urgent

(Item 5)

None.

42. Appeal Rights Exhausted Asylum Seekers - Update

(Item 6 – report by Mr Paul Carter, Leader of the County Council and Mr Andrew Ireland, Corporate Director of Families and Social Care)

Cabinet considered a report of the of the above named Member and officer detailing the history and current position of the financial costs incurred by the County Council when supporting those young people in the County who had been declared to be 'Appeals Rights Exhausted' (ARE) by the UK Border Agency (UKBA) and therefore had no right to claim financial or housing benefits, but who had yet to be deported.

The Leader of the County Council introduced the item for consideration and in particular he made the following observations and statements:

- (i) That Kent County Council had pursued ongoing and lengthy negotiations with various Home office Ministers and more recently with Mark Harper MP, Minister of State for Immigration in order to highlight, and seek a solution to, the costs incurred by Kent County Council in supporting ARE young people who had not yet been deported over the last three years.
- (ii) That the cost of supporting these young people, who numbered between 120 and 130 should not fall to the citizens of Kent but should be funded by the Treasury.
- (iii) There had for some time been conflict between the advice received from the Home Office on the matter of support for these young people and the requirements of the Children's Act to support children or young adults who were once looked after children, up to in some cases the age of 24. In addition the Leader referred to the moral issues which would influence any debate of this kind. When questioned about the anomalies between the advice from the Home Office and the requirements of the Children's Act the Minister was not able to provide a definitive answer which could direct the Kent County Council's actions.
- (iv) Numbers of ARE young people, being supported by the County Council remained consistent at just over 100. This was owing to the fact that once a young person classed as ARE reached 24 and had not been deported by UKBA they would cease to be registered as an unaccompanied asylum seeker and become an unsupported adult. At approximately the same time they would have been replaced on the list of ARE young people by an individual in care reaching the age of 18 and leaving care. The financial burden to Kent county Council was running at £2 million a year and had been for the last 2 years and 9 months. This created an outstanding balance of £5-6 million which Kent County Council believed was owed to it by the Government.
- (v) The Home office had suggested that Human Rights tests be applied to the young people in question and this had been carried out. The results showed that 70% of the young people in question would have their human rights infringed should the County Council withdraw all financial support. A further request to the government that funding be provided for only those people identified in this category was not received positively and no offer of funding was forthcoming.
- (vi) Legal advice suggested that a resolution between the Home Office advice and the Children's Act would be settled most effectively by a court ruling and this would be pursued further.

Mr Wild, Corporate Director of Governance and Law spoke to the item and further explained the points made by the Leader. He reported to Cabinet the following:

- (i) That neither the Government nor the Courts had formed a sufficiently strong view on the action which the County Council should take. Without financial support from central government the council may be expected to provide up to £2m annually of unbudgeted funding, but taking the Home Office advice and ceasing support would carry significant consequences.
- (ii) These consequences were primarily moral issues regarding the deliberate making destitute of individuals, particularly those whom the Council once had a responsibility for as corporate parents but also the possible financial and resource issues related to the potential for an increase in crime. These issues and the responsibilities, including post care responsibilities, of the role of corporate parent effectively made the option of ceasing support impossible. To consider these responsibilities in relation to the worst outcome of ceasing support, were a tragedy such as the death of a young person to occur owing to the Council's failure to support them the council or individuals within it could face corporate manslaughter charges.
- (iii) He advised that the option to pursue the matter via legal channels at the earliest opportunity was the preferred option to provide a viable and fair solution. It would involve a challenge via judicial review against the Home Office for failing to perform their responsibilities for ARE young people, namely not deporting them or supporting their extended stay. This is the void which the council would ask the court to address. If the Home office did not deport or support the individuals in question then the court would be asked to confirm the rights of the individuals and the responsibilities of the County Council in the matter. Waiting for the matter to be resolved was becoming unrealistic and therefore it was recommended that the council take the initiative and pursue the matter.
- (iv) Mr Carter confirmed that this way forward was necessary and prudent and that an answer must be sought in order that the burden of financial responsibility was removed from the residents of Kent. He suggested that this pathway be included within the actions to be taken under recommendation one of the report should it be agreed by Cabinet.
- (v) He reminded Cabinet that alongside these ARE young people the County supports between 900 and 1000 unaccompanied minors. The grant from government has not been inflation linked when it was agreed and therefore would also require renegotiation in the future as costs rise in order to ensure that no costs fall directly to Council tax payers in Kent. Currently it could take almost three years for the Home office to decide the asylum applications of the children and this was not, he believed, acceptable.

Mrs Jenny Whittle, Cabinet Member for Specialist Children's Services supported the recommendation of the Corporate Director of Governance and Law and contained within the recommendations of the report to pursue a legal ruling on the matter of responsibility.

She further referred to the comment made previously by the Leader regarding the fact that ARE young people disappear from the list at the age of 24 if they had not

been deported. She described the acceptance of the Home Office when presented with these facts and regarded it with concern.

Human Rights funding supported young people for 13 weeks in order that there was sufficient time for deportation to be carried out but this was not proving to be sufficient for the necessary action to be taken. UKBA must accept that once an asylum claim had been decided in the negative, those people must be deported more speedily.

The Leader asked Mairead MacNeil, Director for Specialist Children’s Services, substituting for the Corporate Director of Families and Social Care, to confirm that when, aged 24 these young people were no longer considered to be ARE unaccompanied minors and recorded in this way that they would become destitute and ‘disappear’ from the asylum radar. Ms MacNeil confirmed that this was correct and added that often support ceased or tapered away from the age of 21. She reiterated the difficulties surrounding the status of immigrants particularly those that arrived in England as unaccompanied children but that where it had been deemed safe to deport individuals back to their country of origin this should then be conducted in a timely fashion.

It was RESOLVED:

CABINET Appeal Rights Exhausted Asylum Seekers - Update 18 March 2013	
1.	That the work of the Council, along with other similarly affected local authorities, to make vigorous representation to both the Home Office and the Department for Education to bring clarity to the legislation over this issue, be continued [
2.	That work with other affected authorities be conducted to seek an urgent meeting with UKBA lawyers to find a solution to the present situation. That, should the outcome of these negotiations be unsuccessful, all legal remedies in relation to UKBA’s failure to either support or deport ARE young people, be explored.
3.	That a monthly invoice for the cost of looking after these young people who are ARE and detailing the numbers and outcomes of the Human Rights Assessments that have been undertaken be produced and sent to UKBA.
4.	That a report of the Cabinet Member for Specialist Children’s Services detailing progress in discussions with central government be received by Cabinet 3 times per year.
REASON	
1.	In order that the County Council may have definitive direction regarding the rights of ARE young people and

	the responsibilities of local and central government toward them.
2.	In order that, owing to the poor results of the approach outlined in 1, a definitive resolution may be sought more quickly via the legal routes available, such as Judicial review.
3.	In order that a record of costs is maintained and no uncertainty remains regarding the County Council's opinion as to who should be responsible for those costs.
4	In order that Cabinet remain fully informed of the situation.
ALTERNATIVE OPTIONS CONSIDERED	The alternative options of ceasing support for ARE young people or of continuing the current support unaided by Government are discussed and discounted within the report and are detailed in the record above.
CONFLICTS OF INTEREST	None.
DISPENSATIONS GRANTED	None.

43. Quarter 3 - Revenue and Capital Budget Monitoring Report

(Item 7 – report of Mr John Simmonds, Cabinet Member for Finance and Business Support and Mr A Wood, Corporate Director of Finance and Procurement)

Cabinet received a report of the above named Member and officer reporting the council's financial position as of quarter three and highlighting for consideration any significant issues.

The Cabinet member for Finance and Business Support introduced the report for Cabinet and in particular he referred to the following information contained therein:

- That the underspend was forecast at £8.5 million for the present financial year, which was an increase of 1.3m. However on consideration of rolled forward costs for rephrased projects a reduction must be made and the net underspend forecast became £6.4 million. He reminded Cabinet that £5 million of this underspend was committed in to the 2013/14 budget as approved by County Council.
- Pressure of approximately £6 million in value, remained on the Specialist Children's Services budget. This particularly related to the areas of fostering and residential services. Provision had been made in the 2013.14 budget to acknowledge these pressures and this combined with further plans for early intervention work would help to balance the budget in this difficult area.
- Adult Social Care reported an underspend of £1.6million but the demands in this directorate were hard to predict and therefore that figure was subject to change.
- School reserves had depleted by a further £5.7million which affected the cash balance report but was a result of the transfer of school from LEA control to academy status.

- The Directorate for Education, Learning and Skills had reported a 4m underspend, largely accounted for by the rephasing of youth employment programme but also as a result of increased purchases via Edukent for the psychology service, by which he was encouraged.
- Transport continued to show savings following the changes to Home to School transport policy and the introduction of the Freedom pass but SEN transport remained under pressure.
- The Directorate for Environment, Highways and Waste continued to show savings made by the reduction in the tonnage of waste that went to landfill however, the Directorate had incurred necessary but unplanned costs from works required during and after snowfalls. IN addition £1.15million had been allocated to the budget in order that pothole repairs, required after the recent bad weather, could be undertaken. The investment to date had proven its worth in keeping the Kent economy running in difficult conditions but also by helping to achieve a reduction in costs attributed to insurance claim payouts.
- Commercial Services showed a reduced contribution to the council's budget owing to the restructure recently undertaken and it was forecast that this would be recovered in future years.
- The Finance Directorate continued to report less borrowing and there has been some necessary rephrasing of the Capital programme. A £2.3million underspend was reported which was largely attributed to extremely good practice in the area of vacancy management.
- A further £4.78million had been recovered from our principle deposits lost in the Icelandic bank collapse
- The Council had 333 fewer staff after the first three quarters of the financial year and services continued to be delivered.

In relation to the Capital Budget the Cabinet member reported the following:

- That the Capital programme budget remained high at £644million over the period 2012/15 with £602million of that currently allocated to projects.
- Of the variances reported £31million of projects would be rephrased and 19.5m would be met by predicted underspends.

The Corporate Director of Finance and Procurement added the following information:

- That the number of 'Looked after Children' for the first time on three years showed a significant reduction.

[This statement referred to inaccurate statistics within the report which had omitted a particular group of children in error]

- That the achievement of reductions in spending and the underspends that this had created should be congratulated. However it was important that the hard work and prudent spending and investment continued in light of the fact that currently the Council was 0.15% within spending targets.

It was RESOLVED:

<p>CABINET Quarter 3 – Revenue and Capital Budget Monitoring Report 18 March 2013</p>
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1.	That the latest monitoring position on both the revenue and capital budgets, be noted.
2.	That the pressure forecast within the SCS portfolio be noted and the fact that this is offset by underspending on the other portfolios and therefore the council remains on target to deliver the £5m underspend to support the 2013-14 budget be acknowledged
3.	That the changes to the capital programme, as detailed in section 4.3 be agreed.
4.	That the latest Financial Health Indicators and Prudential Indicators as reported in appendix 2 and appendix 3 respectively, be noted.
5.	That the directorate staffing levels as at the end of December 2012 as provided in section 8 be noted.
REASON	
1,2, 4 & 5	In order that the Cabinet is fully appraised of the financial impact of the delivery of policy and projects.
3.	In order that necessary accounting tasks can be undertaken to the budget.
ALTERNATIVE OPTIONS CONSIDERED	The report details events that have already occurred for the purposes of monitoring.
CONFLICTS OF INTEREST	None.
DISPENSATIONS GRANTED	None.

44. Quarter 3 - Performance Monitoring Report

(Item 8 – report of Mr Roger Gough, Cabinet Member for Business Strategy, Performance and Health Reform and Mr D Cockburn, Corporate Director for Business Strategy and Support)

Cabinet received a report of the above named Member and officer which detailed the performance of the Council against key targets in the third quarter of the financial year and highlighted any areas of significant change or concern.

Mr Roger Gough, Cabinet Member for Business Strategy, Performance and Health Reform spoke to the report; in particular he referred to the following:

- That the report contained the 30 Key Performance Indicators as identified by Kent County Council and a range other Lead Indicators. In addition information was included on Organisational Development and on the Council's Risk Register.
- Within the KPI's red indicators were reduced by 4. Those that remained were showing a positive direction of travel. In addition, some of those targets which remained at red were acknowledged as being extremely hard to achieve but remained a commitment of the council.
- The Contact Centre had reported significant improvement as a result of work conducted recently, particularly by the Performance and Evaluation Board to improve target achievement.

- Corporate Risk Register included a systematic report of how risks were mitigated. The report had improved over the last 18 months and now recorded and reported actions as a result of issues raised.

The Leader of the Council expressed particular pleasure that an improvement had been shown in days lost to sickness absence. This showed, he argued, that more staff were being better supported in work and throughout episodes of sickness and that productivity was improved as a result.

Mrs Jenny Whittle, Cabinet Member for Specialist Children's Services updated the panel on figures for children in care who were placed with families as the report was no slightly out of date. At this time last year 70 children had been placed, this year that figure would be 105. She accredited this improvement largely to the vast improvements that had been made in relations between KCC and its partners and the genuine and dynamic partnership working that had ensued.

In addition Voluntary organisations were now referring potential adopters to the KCC coffee mornings and she hoped this would lead to further successful placements of children into loving families.

Finally she thanked the members of the Adoption Improvement Panel for providing a valuable and robust check on the service.

These things combined she hoped would lead to a 'good' rating when ofsted had inspected the service later that day.

Amanda Honey, Corporate Director of Customer and Communities highlighted the number of first time entrants to the youth justice system and throughout the period reported a significant reduction had been achieved. From 1900 in March to 770 at present and like Mrs Whittle she praised the excellent partnership working, particularly with the police that had helped to secure that success.

Mr Mike Whiting, Cabinet member for Education, Learning and Skills expressed his gratitude for the work of the Education team at KCC for the upward trend in almost all of the indicators reported. In addition he reported the number of schools now classed as good or outstanding by ofsted. Kent has previously been criticised in this area and had responded well.

Mr Bryan Sweetland, Cabinet member for Highways, Environment and Waste spoke to the item, he reported that the small number of amber indicators were largely as a result of the inclement weather experienced recently and that measures to address these were now in place. The County Council 'Find and Fix' project was underway and potholes on roads in Kent left by the rain and snow were being rectified.

In addition he announced that a new way of reporting potholes had been introduced and members of the public could now take a picture of a pothole, send it to the council and it would be added to the programme of works.

The Leader referred to the snow that had occurred recently and the challenge that it presented in some areas of the County. He congratulated the team on the work that had been undertaken to prevent or rectify problems, including the farmers with who we work in partnership to clear roads.

Richard ? was in attendance to talk to the item and he added in conclusion that satisfaction measures reported in relation to the customer contact centre website had now been added to the performance report. These baseline figures would now be tracked to identify trends.

It was RESOLVED

CABINET Quarter 3 – Performance Monitoring Report 18 March 2013	
1.	That the performance monitoring information as contained within the report and discussed, be noted.
REASON	
1	In order that the Cabinet is fully appraised of the of the delivery of policy and projects.
ALTERNATIVE OPTIONS CONSIDERED	The report details events that have already occurred for the purposes of monitoring.
CONFLICTS OF INTEREST	None.
DISPENSATIONS GRANTED	None.

45. Submission of final Business case for John Wallis Academy

(Item 9 – Report of Mr Roger Gough, Cabinet Member for Business Strategy, Performance and Health Reform and Mr D Cockburn, Corporate Director for Business Strategy and Support)

This is an open minute for publication of an exempt item considered in closed session.

Mr Gough, Cabinet member for Business Strategy performance and Health Reform introduced the item for Cabinet and in particular he referred to the following points:

- That there had been a delay in the pursuance of this project owing to changes in academy status of schools and the Building Schools for the Future programme but he was pleased that this part of the planned work could now continue, on condition that planning permission is secured in June 2013.

Having also heard from the Cabinet Member, information pertaining to exempt information contained within the report;

It was RESOLVED

CABINET Submission of Final Business Case for John Wallis Academy 18 March 2013
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1.	That the submission of the Final Business Case for The John Wallis Academy to EFA and DFE for final departmental approval by EFA, DFE and the Treasury be agreed
2	That authority be delegated to the Director of Property and Infrastructure to agree final contractual terms, provided that no affordability gap occurs.
3	That authority be delegated to the Director of Property and Infrastructure to enter into any necessary contracts/ agreements on behalf of the County Council, following approval to final contractual terms as set out in (para. 6.1.2) above, in relation to The John Wallis Academy and the Future Schools Agreement
4	That authority be delegated to the Director of Property and Infrastructure Support to be the nominated Authority Representative within the relevant agreements and to enter into variations as envisaged under the contracts.
REASON	
1	For reason set out in the exempt report.
2,3 &4	To ensure that sufficient explicit authority exists in order that no delays to the process are now incurred
ALTERNATIVE OPTIONS CONSIDERED	Alternatives were considered and discounted at the outset of the programme, prior to the tender process beginning.
CONFLICTS OF INTEREST	None.
DISPENSATIONS GRANTED	None.