

KENT COUNTY COUNCIL

CABINET

MINUTES of a meeting of the Cabinet held virtually at 11:45am on Monday, 29 June 2020.

PRESENT: Mr R W Gough (Chairman), Mrs C Bell, Miss S J Carey, Mrs S Chandler, Mr P M Hill, OBE, Mr R L H Long, TD, Mr P J Oakford, Mr M D Payne, Mrs S Prendergast and Mr M Whiting

IN ATTENDANCE: Mr S Collins (Director of Integrated Children's Services (West Kent and Early Help and Preventative Services Lead)), Mr M Dunkley CBE (Corporate Director for Children Young People and Education) and Mr B Watts (General Counsel)

UNRESTRICTED ITEMS

150. Chairman's Introduction

(Item 1)

Mr Gough set out the reasons for the meeting of Cabinet today. He said that the Scrutiny Committee, at its meeting on 23rd June 2020, had carried a motion, by 6 votes to 5 with 1 abstention, to refer the key decision 20/00017 regarding the NEETs Support Service to Cabinet for re-consideration and discussion with the Lead Member with a view to confirming, rescinding or amending that decision. The Scrutiny Committee had also asked that the decision-maker provide a written statement of the re-considered decision to all Members of the Council. Mr Gough said that the implications on the timescales for the implementation of the decision had an impact on the current contract, which was scheduled to end on 30th September 2020 and there was a need therefore to provide clarity for the provider organisation, its staff and the young people accessing the current NEET service. He also referred to the potential for activity to pick up when schools returned in September and the importance that any transitions for staff employed under the current contract and young people supported by the current provider were robustly managed. Mr Gough concluded by saying that the meeting of Cabinet today had been arranged to enable it to consider, debate and review the decision in a timely manner.

151. Apologies and Substitutes

(Item 2)

No apologies for absence were received.

152. Declaration of Interests by Member in Items on the Agenda for this meeting

(Item 3)

There were no declarations of interest.

**153. Scrutiny Committee Request for Review of Decision 20/00017
(Recommissioning of Early Help Services)**

(Item 4)

- (1) Mr Gough invited Mrs Chandler (Cabinet Member for Integrated Children's Services) to introduce the item. Mrs Chandler said that the Scrutiny Committee's discussion had focussed on the process followed in making the decision. The needs of the young people of Kent, who needed the service, were foremost in her consciousness when she was making the decision. Three options had been considered which were firstly to make a short extension to the existing contract, secondly to bring the service in-house and provide it through The Education People (TEP) or thirdly to procure a new contract through a competitive tendering process. The second option was preferred as the first option could not include the cohort of young people with disabilities or special educational needs. One of the key findings of the Ofsted/CQC inspection of SEND Services in March 2020 was that education services for children with disabilities were not joined up. In addition, it was considered that, although CxK (the current provider) and TEP could submit bids in a competitive tendering process under option 3, the benefits of option 2, where Teckal rules applied, outweighed the benefits of testing the market again.
- (2) Mrs Chandler said it had been anticipated that the proposed decision would have been discussed at the Children, Young People and Education Cabinet Committee (CYPE) scheduled for May 2020 and the papers would have been published at the end of April. This meeting had been cancelled and the papers were not published until 13 May in accordance with the pre-Proposed Record of Decision process established in response to the coronavirus pandemic. CxK had been advised in September 2019 and in January 2020 that the contract would terminate on 30 September 2020 and had been advised of the delay to the decision-making process in April 2020.
- (3) Stuart Collins (Director of Integrated Children's Services) said he would focus on answering questions and concerns raised at the Scrutiny Committee meeting on 23 June 2020. In addressing the Committee's concerns about transparency in the decision-making process, he said that CxK had been informed, in writing, in September 2019 about a proposed contract extension with the current contract ending on 30 September 2020. Further discussion with CxK took place during routine, formal contract management meetings and CxK were advised again in January 2020 that the existing contract would end in September 2020. Notice of the forthcoming decision was published in February 2020 and it had been planned that a report on the proposed decision relating to the delivery of the NEET service would be presented at the CYPE meeting in May with the papers for that meeting being published at the end of April. He reiterated the points made by Mrs Chandler about the impact of the Covid-19 restrictions on the decision-making process including the fact that papers relating to the decision were not published until May. No additional information was provided to CxK at that time because a decision had not been made about whether to utilise Teckal regulations or to undertake a procurement exercise. If a decision was subsequently made to tender for the service, the provision of such information might have been interpreted as conferring an unfair advantage on the existing provider.

- (4) Mr Collins then addressed concerns raised by the Scrutiny Committee that the decision not to go down the route of open procurement had created the impression that a decision had been made to bring the NEET Support Service, provided by CxK, in-house without considering the alternatives and without consultation. He said that there were two principal factors, strategic importance and operational importance, to be considered in deciding whether a service should be provided in-house or outsourced. The provision of a NEET Service scored highly on both factors which suggested the services should be delivered in-house. He further said that integrating the service within the school improvement strategy led by the TEP School Improvement team would facilitate a joined-up approach to the prevention of young people becoming NEETS and a smooth transition, without a gap in service, could be achieved by using Teckal.
- (5) In response to the Scrutiny Committee's view that the service provided by CxK was effective and well-regarded, Mr Collins said it was widely acknowledged that was the case. However, overall NEET figures had increased, and some vulnerable groups did not access the service. Furthermore, in order to include young people with a SEND diagnosis, and those who were just below the threshold of diagnosis, a variation in contract would be needed and, as one variation had already taken place, such action would be open to challenge.
- (6) In response to the Scrutiny Committee's concerns about the ability of TEP to meet additional demand for the NEET Service, Mr Collins said that a reduction in ESF/ESFA funding had resulted in a loss of 80 places for young people who were NEETs. However, the co-ordinated approach of the Interdependencies group and the district NEET meetings led by TEP as well as TEP's strong relationships with Kent schools, FE colleges and training providers had minimised the impact of the funding cuts. TEP's approach to its role, as the strategic lead for NEETs within the county, had enabled partners to come together to streamline processes and solve problems.
- (7) Mr Collins concluded by saying that: TEP was already the strategic lead for NEETS; there was a need to improve the offer to NEET young people with diagnosed and undiagnosed SEND; and it would be advantageous for young people if the service could be provided seamlessly. He reiterated his earlier points that:
 - (a) it was not possible to vary or extend the existing contract
 - (b) as the NEET service was of high strategic and operational importance to the authority it should be retained in-house
 - (c) as the requirements of Teckal had been met, the contract for the service could be awarded to TEP without the need for a public procurement.
- (8) Cabinet Members supported the decision and were satisfied of the need for a new contract for the NEETs service to enable it to work across all cohorts of young people, and that bringing the service in-house and the use of Teckal regulations was appropriate. In response to Members' concerns, Mrs Chandler confirmed the authority's commitment to support the voluntary sector, particularly at this time, and confirmed that the decision to provide the service in-house did not impact the viability of CxK. In response to a further

question, Mr Watts (General Counsel) said the Scrutiny Committee had raised reasonable concerns about process and potential prejudice to the provider, however, he was satisfied that the decision made by the Cabinet Member was reasonable and lawful. He also said it would be worth conducting a separate review to identify whether lessons could be learned and to understand how a service provider could feel aggrieved although all constitutional and legal process had been followed.

- (9) RESOLVED that decision 20/00017 be confirmed, and the Cabinet Member be asked to make a written statement of the reconsidered decision to be sent to all Members of the Council.