

From: Linden Kemkaran, Leader of the Council
Amanda Beer, Chief Executive

To: Devolution & Local Government Reorganisation Cabinet Committee – 8 September 2026

Subject: **Option 4B – Position Statement**

Classification: Unrestricted

Summary: This report provides the Cabinet Committee with a position statement following the Secretary of State's decision of 16 July 2026 to select Option 4B as the future structure for local government in Kent and Medway. It sets out the basis and rationale for that decision, the Administration's response and the options available to the Council should it wish to challenge the decision.

Recommendations: Cabinet Committee is asked to:

- 1) Note the basis and rationale for the Secretary of State's decision to select Option 4B, as set out in Section 1.
 - 2) Note the concerns raised in the Leader's letter of 27 July 2026, as set out in Section 2, and note that no substantive response from the Ministry of Housing, Communities and Local Government (MHCLG) has yet been received.
 - 3) Note that the option of a potential legal challenge remains under review and that a related judicial review longstop date, should it become appropriate, would be by mid-October 2026, subject to the standard requirement to act promptly.
 - 4) Note that implementation preparation must continue in parallel with any legal challenge, reflecting the Chief Executive's role as Senior Responsible Officer for LGR delivery across Kent and Medway as set out in Section 4.
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1. The Secretary of State's LGR Decision: Basis and Rationale

1.1 On 16 July 2026, the then Secretary of State for Housing, Communities and Local Government, the Rt Hon Steve Reed OBE MP, wrote to the leaders of Kent and Medway's fourteen councils to confirm his decision on the future structure of local government across the county. Of the five options submitted, he selected the four-unitary proposal supported by Dover District Council, Swale Borough Council and Thanet District Council (referred to as Option 4B) over the County Council's preferred single-unitary model, Option 1A.

1.2 Option 4B creates four new unitary authorities, each replacing the current arrangement of a county council and the district, borough and city councils operating within it. North Kent will combine Dartford, Gravesham and Medway; West Kent will combine Maidstone, Sevenoaks, Tonbridge and Malling, and Tunbridge Wells; Mid Kent will combine Ashford, Folkestone and Hythe, and Swale; and East Kent will

combine Canterbury, Dover and Thanet. Vesting Day remains set for 1 April 2028, with elections to the new shadow unitary authorities in May 2027.

1.3 The Secretary of State's reasoning rested on three principal grounds. On alignment with functional economic geography and housing delivery, he judged that Option 4B struck a better balance between scale and local connection than the alternatives, citing North Kent's role in the Thames Estuary growth corridor, West Kent's professional services and life sciences base, Mid Kent's mix of urban, rural and coastal assets, and East Kent's health, life sciences and creative-economy potential.

1.4 On place-based service delivery, he acknowledged the additional disaggregation risk created by moving from two tiers to four new authorities but concluded that the resulting structures would better align with existing public sector boundaries. On neighbourhood empowerment, he pointed to the proposed use of neighbourhood area committees as a mechanism for community influence over local service design.

1.5 On the financial case, the letter is more equivocal. The Secretary of State stated that Option 4B was *'likely to generally represent an overall improvement in, or be similar to, the sustainability of current structures'* – which appears to accept the possibility that four new unitaries would deliver no net financial improvement over the existing two-tier structure. He acknowledged that the single-unitary option could deliver greater savings but concluded that it did not meet the wider criteria, principally because of its population - at almost 1.9 million residents, Option 1A would have created the largest local authority in England.

1.6 Two matters received comparatively limited treatment, given their particular significance to Kent and Medway. On unaccompanied asylum-seeking children, the Secretary of State recognised the pressures that reorganisation places on existing statutory arrangements and committed MHCLG to working with the Home Office, the Department for Education and affected councils to ensure continuity of service and provision. The letter is also silent on the county's distinctive border-related transport responsibilities at the Short Straits crossings, the Channel Tunnel and the inland border facilities, as well as the associated highways resilience functions exercised through Operation Brock – despite MHCLG's acknowledgement in its interim feedback letter of 15 May 2025 that these represented a 'unique consideration' for Kent's reorganisation.

2. The Administration's Response

2.1 The Leader of the Council wrote to the Secretary of State on 27 July 2026. By that date, the change in Government meant that the letter was addressed not to Mr Reed but to his successor, the Rt Hon Angela Rayner MP. The letter requests further explanation and information and sets out four substantive areas in which detailed explanations and supporting documentation are sought:

- **Assessment of Option 1A.** The letter identifies an apparent inconsistency between the decision letter's finding that Option 1A did not meet the statutory criteria and a verbal statement made by the Minister, Baroness Taylor, at the

meeting convened to brief council leaders on the morning of 16 July, at which she is recorded as saying that all proposals had met the criteria. The letter also draws a distinction, taken from MHCLG's own correspondence, between a 'preliminary assessment' conducted before consultation and a 'formal assessment' conducted afterwards. It asks whether Option 1A was found to meet the criteria at the preliminary stage before being found not to meet them at the point of decision. The lack of clarity on this issue raises a potential question of procedural fairness, since consultation respondents would have had no reason to believe that they were commenting on an option the Government did not regard as viable.

- **The financial case.** The Leader notes that the joint financial assessment methodology – commissioned by all fourteen Kent and Medway councils specifically to allow comparison between options – assessed Option 1A as capable of delivering up to £538 million more than Option 4B over ten years, and Option 3A as capable of delivering up to £307.1 million more than Option 4B over the same period. The decision letter does not explain how this financial assessment was considered or what weight was attached to it in reaching the decision. The letter raises a further, more specific concern about the proposed East Kent authority, which will combine areas of significant coastal deprivation with correspondingly high demand for adult social care, children's social care and SEND provision. It asks what allowance was made for these pressures and for the unresolved question of how the leaving-care costs of unaccompanied asylum-seeking children will be allocated between the new authorities.
- **Border-related transport and highways resilience.** MHCLG's interim feedback letter of 15 May 2025 on the interim LGR plans acknowledged Kent's 'unique considerations' arising from the Short Straits crossings, the Channel Tunnel and the inland border facilities. It specifically asked all fourteen councils to demonstrate how these functions would be resolved under their proposed structures. The Leader notes that the decision letter makes no reference to this issue.
- **Unaccompanied asylum-seeking children.** The Leader welcomes the Secretary of State's recognition of the pressures that reorganisation creates in this area and his offer to work with councils on transitional arrangements. However, given that this issue was also flagged in MHCLG's May 2025 interim plan feedback and that the need for further work after the Secretary of State decision suggests that the implications were not, in fact, resolved before the decision was reached. The letter refers directly to KCC's experience following the High Court proceedings in this area and asks for confirmation of how the risk of returning to the circumstances that led to that litigation has been factored into the Government's planning for the transition.

2.2 As at the date of this report, MHCLG has provided no response to the 27 July letter, either formally or informally. A brief follow-up letter requesting a response was sent on 18 August.

2.3 KCC is not engaging directly with other county councils on the specific merits of any judicial review proceedings they may be considering. Each area's decision whether or not to seek judicial review would and must turn on the specific facts and reasoning used by the Secretary of State for that decision. A common approach would not be appropriate. KCC continues to engage through the County Councils Network (CCN) and the Association of County Chief Executives (ACCE) on the sector-wide political and operational response to LGR decisions, and on the shift in focus that all county councils now face moving from decision to implementation.

3. Options for Potential Challenge

3.1 Judicial review is potentially available against any decision of the Secretary of State under the Local Government and Public Involvement in Health Act 2007 (the legislation that underpins the Secretary of State's invitation for proposals of February 2025), and as with any such legal challenge, it would be based upon questions of lawfulness.

3.2 It is worth noting that judicial review is not an appeal against the **merits** of a decision. It is a challenge as to the **lawfulness** of the process by which a public body reached its decision.

3.3 A Judicial Review claim must be brought on one or more of three established grounds:

- **Illegality** means that the decision-maker misunderstood or misapplied the law, exceeded the powers conferred by statute, failed to take into account a matter that had to be considered, or took into account a matter that should not have been considered.
- **Irrationality** means that the decision was so unreasonable that no reasonable Secretary of State could have reached it.
- **Procedural impropriety** means that the process itself was unfair, for example through a breach of the Gunning principles where a duty to consult exists.

3.4 The remedies available to the Court if a claim succeeds are limited. Members should have no expectation that a successful challenge would result in the Court itself selecting Option 1A, or any other option, in place of Option 4B. The Court has no power to substitute its own judgment for that of the Secretary of State on a matter properly within the Secretary of State's discretion.

3.5 The principal remedy is a "quashing order" which sets the original decision aside and would require the Secretary of State to take the decision again, but in a lawful manner, correcting whatever procedural or legal issue had been identified. This could ultimately mean the very same decision being made, albeit lawfully. The Court may also grant a "declaration" clarifying the legal position but without formally quashing the decision. These remedies could all therefore potentially mean the very same outcome.

3.6 The Administration's position for KCC will be kept under review and will be considered further in light of the Secretary of State's response to the 27 July letter.

Legal advice was sought prior to sending the 27 July letter to the Secretary of State. The related cost has been met from existing approved budgets within the Chief Executive's Department. In the event of any further legal input being sought, then such related costs would require the allocation of further officer time and financial resources.

4. Maintaining Implementation Preparation

4.1 KCC's Administration accepts that preparations for implementing Option 4B must continue. Option 4B remains the decision that all fourteen councils in Kent and Medway must prepare to implement.

4.2 This is reflected in the governance arrangements already established for the LGR implementation programme. The County Council's Chief Executive is the Senior Responsible Officer for LGR implementation across Kent and Medway, a role that is deliberately separate from the Administration's political response to the Secretary of State's decision.

4.3 The SRO's duty is focussed on delivery, ensuring that the structures, systems and staff needed to stand up four functioning unitary authorities are ready in time. Continuing that delivery work does not constitute, and should not be read as, any form of acceptance on the concerns set out in Sections 2 and 3 above; it is a clear responsibility that exists whatever the outcome of the Administration's review of the LGR decision for Option 4B.

5. Recommendations:

5.1 Cabinet Committee is asked to:

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Relevant Director & Report Author:

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Appendices:

- Appendix A: Leader of the Council's letter to the Secretary of State – 27 July 2026

Background Document:

Secretary of State's letter to all Leaders and Chief Executives in Kent and Medway – 16 July 2026 available at

https://assets.publishing.service.gov.uk/media/6a58d1d33ae256c99b702f05/Local_government_reorganisation_-_decision_letter_to_Kent_and_Medway_council_leaders.pdf