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| Title of meeting: | City Solicitor and Monitoring Officer- sec 5 Local Government and Housing Act 1989. |
| Date of meeting: | 10 November 2020. |
| Subject: | Portsmouth City Council working outside applicable statutory duty. |
| Report by: | City Solicitor |
| Wards affected: | N/A |
| Key decision: | No |
| Full Council decision | Yes |

1 Purpose of Report

- 1.1 The City Solicitor was notified on 22 September by the statutory Director for Children Services of a proposed breach of our legal duties arising from the unprecedented pressure being placed on PCC by the arrivals of unaccompanied asylum seeking children combined with lack of action by Government and other local authorities to support the Council. The Leader and Cabinet Member for Children's Services have written to the relevant Minister and the DCS has written to other Directors in the South East region requesting help to discharge this duty.
- 1.2 The City Solicitor is required by section 5 of the Local Government and Housing Act 1989 to prepare a report in circumstances where an action, omission or decision leads to the Council operating outside its statutory duties. Ultimately, the legislation is in place to ensure that all Members of the Council are sighted on such serious issues. The City Solicitor has determined that the current situation requires him to write a report which will then be considered by Full Council on the 10th November 2020.
- 1.3 It is also important to note that the decision to prepare a report is not based on any failing in my view by the relevant Members or Officers of this Council.

2 Recommendations

It is recommended that the Council:

- 2.1 Notes that there is an existing tension as between the delivery of two statutory duties of the council: one being the duty under the 1989 Children Act ("sec 20 duty") to provide accommodation for young people, including unaccompanied asylum seeking minors, for whom no alternative care arrangement is possible and the other the duty under the 2004 Children Act to provide safe care for children for whom the council has parenting responsibility ("Corporate parenting").

- 2.2 Notes that the council is currently not discharging the responsibility under the 1989 Act in respect of unaccompanied asylum seeking minors arriving through the Port or identified elsewhere in the city; the Home Office is currently arranging for these young people to be accommodated by other local authorities. Since 1 October 2020 6 young people have been accommodated in this way.
- 2.3 The council's ability to provide safe care under the 2004 Act is being kept under close review and the council will aim to resume discharging its duty under the 1989 Act as soon as either a judgement is made that it has become able to provide safe care or the number of unaccompanied asylum seeking children within the care of the council falls to the number set by the National Transfer Scheme (see below), whichever is the soonest.
- 2.4 The council continues to mandate the Lead Cabinet Member and DCS to continue to work with all relevant Central Government Departments' and to report upon an immediate basis when the current numbers of unaccompanied asylum seekers are such as to be within the National Transfer Scheme criteria (see below).

3 Background

- 3.1 The council has a statutory duty under the 1989 Children Act to take into our care unaccompanied minors arriving at the Port. The separate 2004 Act confers a duty upon both the DCS as the statutory Director and upon the Lead Member for Children to provide a minimum level of safe, statutory care to all children for whom we are corporate parents. These two duties have been in tension for several years now given the significant numbers of unaccompanied minors in our care and the failure of the Government's National Transfer Scheme (NTS) to provide a means through which safe care could be offered by the combination of councils in the South East region. For the region as a whole, the numbers of unaccompanied asylum seeking minors arriving on the South Coast, in particular through Dover and through Portsmouth Ports, would be manageable were the responsibility shared. Despite repeated efforts by the South East Migration Partnership and representations made to the relevant Government Ministers to secure agreement by other councils to take responsibility for young people, it has not been possible to achieve that shared position.
- 3.2 The National Transfer Scheme sets a benchmark number of children for whom each council should be prepared to take responsibility before referring into the scheme. This number is set at 0.07% of the child population in the area. In the case of Portsmouth that figure is 31, whereas for the last two years we have been caring for around 90 on average, at one point (November 2019) caring for 110. There was some reduction in the early months of the Covid 19 lock down as freight traffic through the Port was reduced. Over August and September there was a rapid increase with 22 new arrivals from 18 August to 22 September. This together with the increased number of over 18 years of age "care leavers" whom the council needs to support (generated as a result of the increasing arrivals of under 18s) created a situation which led the statutory DCS to become concerned about the ability of the council to provide safe care for all those who need that care.
- 3.3 It was reported to the City Solicitor in September that PCC had reached a position in Portsmouth where the Authority was unable safely to discharge its corporate parenting responsibilities if it continued to receive into its care unaccompanied young people

under the age of 18 who arrive in the city claiming asylum. The grounds for stating that PCC had reached a position of being unable to offer safe care were as follows:

- 3.3.1 There were no more placements available in the in-house fostering and supported housing services, and as a result we are required to place young people at some distance from the city, often in London. These young people are inherently vulnerable to being trafficked and exploited. When we can place in Portsmouth, we are able to work closely with our partners in the Police to try to keep them safe. When they are placed at a distance this is much more difficult.
- 3.3.2 PCC had exceeded the high levels that we have just about managed over recent years and did not have the resources needed to provide safe enough care. Considering social care alone, all looked after children require allocation to an Independent Reviewing Officer and we were seeing the impact of the increase in demand in this service. The IRO handbook sets out that caseloads should sit between 50-70 and our IRO's are now holding caseloads of 70+. In terms of caseload weighting it is important to note that for all UAM's we are working with interpreters and in many cases working with children placed out of the city, leading to significant additional travel time. Caseloads in the social work team are sitting at 19-22. These caseloads are too high and are impacting on the ability and statutory requirement to meet the needs of all our looked after children and care leavers. Best practice would see allocation of a Personal Advisor to all looked after children at the age of 16 to support their transition to becoming a care leaver at 18. We were not able to provide this best practice and are experiencing delays of transfers of young adults who have turned 18 from the social care to the Personal Advisor Service.
- 3.3.3 Our local infrastructure was also struggling to meet the needs of these children with health and education services unable to manage the increase in demand. These are children who are hungry to access education, but who need additional support to develop their language skills and to adapt to a new country and a new way of learning. The life experiences of these children mean that many are suffering from PTSD and require specialist therapeutic support to help them to manage the emotional impact that this has on them. For many children there are ongoing risks associated to trafficking, exploitation and debt bondage. Whilst we endeavour to provide a good service to all children the DCS had become concerned that our offer to our unaccompanied minor cohort of looked after children was not good enough and was already compromised by the high number that we hold responsibility for.
- 3.4 The DCS discussed the position with the Chief Executive, Chair of our Safeguarding Board and the senior police representative at the quarterly review of safeguarding pressures on 18th September, and all were agreed, that we had reached the point where PCC could not safely discharge its duties and needed to impress this upon the Home Office as the Central Government Department responsible.
- 3.5 The DCS reported to the City Solicitor that it was her belief(shared by all) that the only way in which the obligations of the 2004 Children Act could be safely discharged to secure safe care for all PCC looked after children, including those for whom Portsmouth is their place of arrival into the UK, was to inform the Government that from 1 October 2020 PCC would not take responsibility for any more children arriving through the Port unless an arrangement could be agreed for other councils to take responsibility for young people in Portsmouth on a "one in one out" basis. If this was

not possible it would be for Border Force and the Home Office to make arrangements for children arriving from that date.

- 3.6 The Leader of the Council wrote to the Home Office on 23 September setting out this position. At the same time the DCS wrote to the Directors of other authorities in the south -east making a final plea for help.
- 3.7 Since 1 October 2020, 6 young people have arrived in Portsmouth seeking asylum. All these young people have been accommodated by other authorities. In addition, the Home Office has persuaded a number of authorities to accept responsibility through the National Transfer Scheme for young people who have been in the care of Portsmouth City Council. As of the date of writing this report, there are 65 UAMs in the care of the council compared to 96 at the end of September. The council's position in terms of being able to provide safe care to all looked after children including UAMs, is being kept under constant review. The intention is to resume discharge of the duty under the 1989 Act to accommodate young people arriving in the city once either the council is in a position to provide safe care, or the number in our care has reduced to the level we are expected to care for under the National Transfer Scheme, whichever is the sooner.

4 Reasons for recommendations

The reasons for the recommendations are as follows:

- 4.1 Section 20 of the Children Act 1989 states: "Every local authority shall provide accommodation for any child within their area who appears to them to require accommodation as a result of:
- 4.1.1 there being no person who has parental responsibility for him,
 - 4.1.2 his being lost or abandoned, or
 - 4.1.3 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."
- 4.2 As such the duty is clear as is, upon the declaration that this authority cannot comply, the obligation upon the City Solicitor to report engagement in that the maintenance of the current position is an omission or decision that leads to the authority operating outside its statutory duties and as such report by reason of se 5 of the Local Government and Housing Act 1989 is required.
- 4.3 Given the ongoing breach the range of recommendations as set out in the earlier part of this report should be considered and reviewed upon a regular basis.

5 Integrated Impact Assessment (IIA)

An integrated impact assessment is not required as the recommendations do not directly impact on service or policy delivery. Any changes made arising from this report would be subject to investigation in their own right.

6 Legal implications

The City Solicitor's comments are included in this report.

7 Director of Finance's comments

There are no financial implications arising from the recommendations set out in this report.

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Signed by: City Solicitor

Appendices:

None

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

| Title of document | Location |
|-------------------|----------|
| None | N/A |