

Cabinet Supplementary Agenda



3. Minutes of the Previous Meetings (Pages 3 - 24)

To approve as an accurate record, the minutes of the meetings held on:

22 February (Part A); and
6 March 2023 (Part A & Part B)

12. Local Government & Social Care Ombudsman Report Finding of Fault causing Injustice and Report by the Monitoring Officer under section 5A of the Local Government and Housing Act 1989 (Pages 25 - 40)

Appendix – monitoring Officer Report

Katherine Kerswell
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Agenda Item 3

MINUTES of the Meeting of the **CABINET** held on Wednesday, 22 February 2023 at 6.30pm in the Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX

Present: Executive Mayor Jason Perry (Chair);

Councillors Jeet Bains (Cabinet Member for Planning and Regeneration), Jason Cummings (Cabinet Member for Finance), Maria Gatland (Cabinet Member for Children and Young People), Lynne Hale (Deputy (Statutory) Executive Mayor and Cabinet Member for Homes (Vice-Chair)), Yvette Hopley (Cabinet Member for Health and Adult Social Care), Ola Kolade (Cabinet Member for Community Safety), and Andy Stranack (Cabinet Member for Communities and Culture).

Also Present: Councillors Mario Creatura (Conservative Party Whip), Callton Young OBE (Shadow Cabinet Member for Finance), Janet Campbell, Stuart King, Enid Mollyneaux, Richard Chatterjee, Rowenna Davis

PART A

20/23 Apologies for Absence

There were no apologies for absence received from Members.

21/23 Disclosure of Interests

There were no declarations of interest received from Members.

22/23 Minutes of the Previous Meeting

RESOLVED that the Part A and Part B (not for publication) minutes of the previous meeting of the Cabinet, held on 25 January 2023, be approved as correct records.

23/23 Any Urgent Business

There were no items of urgent business, however, the Executive Mayor took this opportunity to make the following announcements:

(i) Councillor Joseph Lee

Executive Mayor Perry said it gave him great pleasure to announce that Councillor Joseph Lee's wife, Charlotte, had given birth to twin boys last night – Roman and Joshua. He invited all colleagues to join with him in wishing them good health and happiness.

(ii) Anniversary of War in Ukraine

The Executive Mayor announced that, this week, marked one year since the start of the devastating war in Ukraine. He said that, on Friday, the Civic Mayor and he would raise the Ukrainian flag and hold a minute's silence to remember those who had lost their lives as a result of Putin's unjustifiable aggression in that region. In particular, the Executive Mayor wished to send his thoughts to the 698 displaced Ukrainians Croydon had hosted over the past year who he was sure would be worried about the future of their country. Executive Mayor Perry said to them, "we stand with you, we stand with Ukraine."

(iii) Additional Meeting of Cabinet – Monday 6 March 2023

The Executive Mayor asked Members to note that on Monday 6 March 2023, he would be convening an additional Cabinet meeting to agree the final Housing Repairs contract provider. This, he said, was an important decision for the Council and therefore had agreed this early Cabinet meeting to ensure the Council had as much time as possible to mobilise the new contract. The Executive Mayor said it had been really important that the Council had undertaken resident, scrutiny and colleague involvement throughout this process, and he had called this additional meeting to ensure the decision was made in the transparency of a meeting held in public.

(iv) Household Support Fund Award

Finally, the Executive Mayor welcomed the Government's decision yesterday to award Croydon a further £6m for its Household Support Fund. This new funding would, he said, help to ensure local residents were protected from the worst impacts of the cost-of-living pressures facing the country and the Council would be bringing forward proposals for its distribution in due course.

24/23

Scrutiny Stage 2

Cabinet considered a report, which invited the Executive Mayor, in Cabinet to approve the full response reports in respect of updating the Homelessness and Rough Sleeping Strategy and the distribution of the Household Support Fund Grant, arising from the Stage 1 reports that had been presented to the Cabinet meeting held on 7 December 2022, which included action plans for the implementation of agreed recommendations, or reasons for rejecting the recommendations and that these be reported to the Scrutiny and Overview Committee or relevant Sub-Committees.

Councillor Rowenna Davis, Chair of the Council's Scrutiny and Overview Committee, addressed Cabinet in respect of the recommendations submitted.

The Executive Mayor, in Cabinet, **RESOLVED** that the response and action plans attached to this report at Appendices 1 and 2 be approved and that these be reported to the Scrutiny and Overview Committee or relevant Sub-Committees.

25/23

Period 8 Financial Performance Report

Cabinet considered a report, which provided the Council's forecast outturn as at Month 8 (November 2022) for the General Fund (GF), Housing Revenue Account (HRA) and the Capital Programme (CP). The report also formed part of the Council's financial management process for publicly reporting financial performance monthly.

The Executive Mayor said that this report set out yet more evidence of his commitment to getting the Council's finances back on track.

Accordingly, he was happy to agree the recommendations in the report and note that despite the challenging financial position the Council faced, it remained on track to come in on balance this year.

The Executive Mayor, in Cabinet, **RESOLVED** that:

1. The fact that the General Fund revenue budget outturn was forecast to be balanced at Month 8, be noted. (*Service directorates were indicating a £16.865m overspend. This was offset by £0.978m corporate underspend, £4m use of earmarked inflation reserves, £5m use of the general contingency budget and the budgeted £6.9m contribution to General Fund Balances being released.*)
2. The forecast elimination of the planned contribution to General Fund Reserves of £6.9m for 2022/23, be noted.
3. Note that a further number of risks and compensating opportunities may materialise which would see the forecast change.
4. The actions being taken through the Deficit Recovery Plan, further details of which were as detailed in paragraph 2.15 to the report, be noted.
5. The progress of the MTFs savings, as indicated within Table 4 and detailed in Appendix 3 to the report, be approved.
6. The fact that the Housing Revenue Account (HRA) was projecting an end of year position of a £4.976m overspend, due to inflation, disrepair costs and void rents, be noted.
7. The Capital Programme spend to date for the General Fund of £17.534m (against a budget of £68.160m) with a projected forecast underspend of £15.084m for the end of the year, be noted.

8. The Housing Revenue Account Capital Programme spend to date of £12.352m (against a budget of £25.165m), with a projected forecast underspend of £4.145m for the end of the year, be noted.
9. The fact that the above figures were predicated on forecasts from Month 8 to the year end and therefore could be subject to change as forecasts were made based on the best available information at this time, be noted.
10. The fact that the Council continued to operate a Spend Control Panel to ensure that tight financial control and assurance oversight were maintained, be noted. *(A new financial management culture is being implemented across the organisation through increased scrutiny, such as the monthly assurance meetings, improved communication and budget manager training from CIPFA.)*
11. The virement details, as set out in section 7 to the report, be approved.

26/23

Opening the Books – Reports from Worth Technical Accounting Solutions

Cabinet considered a report, which presented the resulting reports that arose from the commissioning of a series of reviews by Worth Technical Accounting Solutions following the Opening the Books project, which was launched by the Executive Mayor in July 2022 to improve the Council's understanding of current financial risks and to work towards a sustainable financial future.

It was reported that the reports were being shared, in full, under the Executive Mayor's openness and transparency ethos, with nothing hidden. It was further reported that the recommendations made by Worth TAS had been accepted in their entirety by the Council and were set out in the action plan in Appendix F.

It was recommended that the Council's Audit and Governance Committee be asked to (1) debate these at a future meeting, scheduled for 3 March 2023; and (2) monitor the progress of the recommendations through to completion.

Accordingly, the Executive Mayor, in Cabinet, **RESOLVED** that:

1. The Worth Technical Accounting Solutions reports be accepted and referred on to the Audit and Governance Committee for debate; and
2. The Audit and Governance Committee be requested to monitor the implementation of the recommendations from the reports.

Revenue Budget and Council Tax Levels 2023-24

Cabinet considered a report, which stated that, on 22 November 2022, the Council's Section 151 Officer had issued a Section 114 Notice to make it clear to all Members of the Council that it faced a financial situation of an extremely serious nature with significant estimated unfunded financial deficits forecast from 2023/24 onwards.

It went on to state that alongside the S114 Notice, the Council's Medium-Term Financial Strategy (MTFS) had been published and subsequently presented to Cabinet on 30 November 2022, which set out in detail the financial projections for the Council through to 2025/26 as well as identifying there were still legacy gaps in the Council's open financial accounts going back to 2019/20, estimated at £74.6m for which government support needed to be sought.

The MTFS Update report had demonstrated significant gaps in the Council's budget each year for 2023/24, 2024/25 and 2025/26. Previously the Government had assisted the Council by granting Capitalisation Directions of £150m over the period from 2019/20 to 2023/24 of £70m, £50m, £25m and £5m, which allowed the Council to finance ongoing annual revenue spend from capital resources including borrowing, an action which went against normally accepted good financial practice. The MTFS Update report identified that the impact of the Capitalisation Direction approach was to continue to push up the Council's debt into the future. Continuing to use the Capitalisation Direction approach was one of the major reasons that the Council's fundamental financial unsustainability was continuing to grow. The report noted that the Council was facing an existential question. With the existing government model of extraordinary financial support for local councils, could the Council ever reach financial sustainability given its borrowing commitments and levels of negative equity now and in the future?

The report proposed that consideration be given to approaching the government for a new model of extraordinary financial support. It set out ten alternative solutions, which ranged in order of priority from the write-off of Croydon's debt to the reform of local government funding to fully reflect demographic demand in Croydon (all ten alternative solutions are listed in Section 1.3 to the report).

Accordingly, the Executive Mayor, in Cabinet, having considered the responses to the budget engagement with residents and businesses, as set out in Section 10 and Appendix I to the report and further considered and had due regard to the equalities impact assessment undertaken on the budget proposals, as set out in Section 15 to the report (as listed as recommendations 2.1 and 2.2 in the report), **RESOLVED** that:

1. The responses to the Scrutiny and Overview Committee recommendations (to follow) on the budget proposals, as set out in Section 20 to the report, be approved.
2. Directors be authorised to implement their service plans for 2023/24, in accordance with the recommendations within the report, the Council's Constitution, Financial Regulations and relevant Schemes of Delegation and to undertake any further consultation required regarding the Equalities Impact Assessment
3. **COUNCIL** be **RECOMMENDED** to approve an increase in the Croydon element of the 2023/24 Council Tax charge by 12.99% (Band D £203.95).
4. **COUNCIL** be **RECOMMENDED** to approve a 2% increase (Band D £31.40) in the 2023/24 Adult Social Care precept levy.
5. Based on the Mayor of London's draft consolidated budget, a 9.7% (Band D £38.55) increase regarding the Greater London Authority precept, be noted.
6. **COUNCIL** be **RECOMMENDED** to approve the calculation of budget requirement and Council Tax, as set out in Appendix G to the report and note that the inclusion of the GLA precept would result in a total increase of 13.93% (Band D £273.91) in the overall Croydon Council Tax Bill.
7. **COUNCIL** be **RECOMMENDED** to approve the setting of the Council's own total net expenditure budget for 2023/24 at £340.911m.
8. **COUNCIL** be **RECOMMENDED** to approve the detailed programme of revenue savings, income, demand pressures and legacy budget corrections, by directorate, as set out in Appendix C to the report.
9. **COUNCIL** be **RECOMMENDED** to approve the proposed £10m budget in 2023/24 to support delivery of the transformation programme.
10. **COUNCIL** be **RECOMMENDED** that the Corporate Director of Resources be authorised to collect and recover National Non-Domestic Rates and Council Tax, in accordance with the Local Government Finance Act 1988 (as amended), the Local Government Finance Act 1992.
11. The revenue budget assumptions detailed in the report and budget projections to 2025/26 made by the Corporate Director of Resources, in agreement with the Chief Executive and with the Corporate Management Team, be noted.

12. The Council's request for a capitalisation direction from the Department of Levelling Up, Housing and Communities (DLUHC) of up to £300.6m (£161.6m in 2022/23 regarding legacy finance issues and £139m regarding 2023/24 to 2025/26, annually £63m, £38m and £38m respectively), be noted.
13. The fact that all Directors would be required to report on their projected financial position compared to their revenue estimates, in accordance with the 2023/24 monthly financial performance reporting timetable, be noted.
14. The statement (section 11 of the Report) of the Corporate Director of Resources, under Section 25 of the Local Government Act 2003, regarding the adequacy of reserves and robustness of estimates, be noted.
15. The fact that the provisional Dedicated Schools Grant allocation for 2023/24 would increase by £26.310m to £427.688m (as at Section 12 to the Report), be noted.

28/23

Review of Council Tax Support Scheme – 2023/24

Cabinet considered a report, which referred to proposals to change the existing Council Tax Support Scheme (CTS) and which were considered and rejected by a meeting of the full Council on 1 February 2023.

It was reported that the reasons for not approving the proposals were due to the concerns around the cost-of-living crisis and that, at that time, it was believed that increasing the income bands by CPI would result in increased support for residents. There were also questions raised about re-introducing non-dependant deductions for disabled not working claimants.

It was further reported that the Department for Levelling Up, Housing and Communities (DLUHC) had published the Local Government Settlement, which set out the funding that the Government would provide to all Councils for the next financial year 2023/24 and that, as part of that settlement announcement, DLUHC had set the level of increase in Council Tax, which, for most Councils in the country, the cap was a 5% increase to Council Tax bills. However, the Government had given Croydon permission to increase Council Tax above the 5% cap, to a maximum of cap of 15%.

In light of the recent developments, the Executive Mayor was asking Council to reconsider proposals to change the existing CTS scheme and to seek its approval to make the changes to Croydon's Council Tax Reduction (Support) Scheme (CTS), which would take effect from 1 April 2023.

Accordingly, the Executive Mayor, in Cabinet, **RESOLVED** to **RECOMMEND** to **COUNCIL** that the following changes be made to the Council Tax Support Scheme:

1. The application of the minimum income floor to households where the claimant or partner are disabled, be removed.
2. The rate at which the income bands were increased annually from be changed from the level of CPI 10.1% to the amount Council Tax was increased for that year, which could be up to 15% cap.
3. Non-dependent deductions (NDD) to disabled not working households be introduced, except where the non-dependent was in receipt of Employment Support Allowance or Limited Capability to Work, or in receipt of carers allowance for the claimant or partner.
4. The Council's Council Tax Support Scheme be amended, as set out above, from 1 April 2023.

29/23

Fees and Charges

Cabinet considered a report, which sought approval to changes in fees and charges that were made in respect of supplies and services provided by the Council to the extent that these fell within the authority of the Executive to determine.

Accordingly, the Executive Mayor, having had due regard to the equalities impact assessment in Appendix 2 to the report, in making the decisions set out in these recommendations, **RESOLVED** that the fees and charges, as set out in Appendix 1 to the report, to the extent that they fell within the authority of the Executive to determine, be approved.

30/23

Capital Programme and Capital Strategy 2022/23 to 2026/27

Cabinet considered a report, which set out the updated capital programme for 2023/24-2026/27 for the Council's General Fund with a forecast of resources available over that period. A specific update of the 2022/23 programme, including the forecast and variance as at Period 8, was also provided.

Accordingly, the Executive Mayor, in Cabinet, **RESOLVED** to **RECOMMEND** to **COUNCIL** that:

1. The Council's 2023/24 to 2026/27 General Fund Capital Programme, which included planned expenditure of £305.67m (including capitalisation directions) across the four years, be approved.
2. The fact that the Council would incur borrowing of £169.53m (including £162m of Capitalisation Direction) in 2022/23, with

further borrowing projected of £45.82m in 2023/24 and £28.36m over the three years after 2023/24, be noted. *(The cost of this borrowing was factored into the Council's Medium Term Financial plan, which resulted in 2023-24 total interest charge and Minimum Revenue Provision of £61.3m.)*

3. The Council's 2023/24 Housing Revenue Account Capital Programme with a total investment planned of £32.62m with borrowing of nil, be approved.
4. The Council's Capital Strategy, drafted with the support of PwC, as detailed within Appendix A of the report, be approved.

31/23

Treasury Management Strategy Statement, Minimum Revenue Provision Policy Statement and Annual Investment Strategy 2023/24

Cabinet considered a report, which report sought the agreement of the Executive Mayor in Cabinet to the Treasury Management Strategy Statement, Minimum Revenue Provision Policy Statement and Annual Investment Strategy 2023/24.

The report set out the Council's Treasury Management objectives, which were to manage the Council's cash flows, borrowing and investments whilst minimising the level of risk exposure. It looked to maximise investment yield returns within agreed risk parameters and ensure that capital expenditure and financing plans were prudent, affordable and sustainable. The report also detailed the borrowing and investment activities that would be undertaken by the Council in the financial year 2023/24 and the two subsequent years and invited agreement to recommendations essential to the achievement of the Treasury Management objectives.

Accordingly, the Executive Mayor, in Cabinet, **RESOLVED** to **RECOMMEND** to **COUNCIL** that:

1. The Treasury Management Strategy Statement 2023/24, as set out in the report, be approved.
2. The Prudential Indicators, as set out in Appendix A to the report, be approved.
3. The Annual Minimum Revenue Provision Policy Statement (required by the Local Authorities (Capital Financing and Accounting) (England) (Amendment) Regulations 2008SI 2008/414), as set out in Appendix B to the report, be approved.

HRA Business Plan and Budget Update Report – January 2023

Cabinet considered a report, which presented the latest position for the 30-Year Business Plan for the Housing Revenue Account with consideration to both capital and revenue investments required for the management and maintenance of Croydon Council's housing stock.

The Plan contained the most up-to-date information in terms of stock investment and would form the basis for the development of a new asset management strategy, which would build upon the recent initial stock condition survey work carried out, that would be extended following the commission of extending the sample basis. It was reported that the Business Plan also demonstrated that the investment proposals were fundable, subject to the assumptions within the Plan, and that the HRA remained sustainable and viable over the 30-year period.

The Executive Mayor, in Cabinet, **RESOLVED** that:

1. The HRA Budget for 2023-24, be approved.
2. The update to the HRA 30-year Business Plan, based on the HRA Budget for 2023-24, be noted.
3. The assumptions the Business Plan was based upon, and the risks associated with those assumptions, be noted.
4. The commencement of the work on a new asset management strategy and enhanced stock condition survey that would further inform the Business Plan, be noted.
5. An application to the Secretary of State for a direction permitting the funding by the HRA of Discretionary Housing Payments from an HRA Hardship Fund, be approved and that the Corporate Director of Housing be authorised to agree the terms of such a direction with DLUHC.

Information, Advice and Guidance Contract

Cabinet considered a report, which sought approval to vary and extend an existing contract that was currently in place to provide information, advice and guidance to residents within Croydon, for an additional period of up to 12 months from 1 April 2023 to 31 March 2024.

It was reported that the original contract had been awarded to Citizens' Advice Croydon, at a value of £333,000 per annum, with an original term of three years from 1 April 2020 to 31 March 2023. It was further reported that this extension was at the reduced cost of £325,000 per annum, giving a new total aggregated contract value of £1,324,000.00.

It was noted that the budget available was £325,000 and that this was 100% funded from Public Health grant.

Accordingly, the Executive Mayor, in Cabinet **RESOLVED** that an extension and variation to the existing Information, Advice and Guidance Contract, awarded to Citizens Advice Croydon, as set out within the report, in order to maintain continued provision whilst a full and compliant procurement exercise was completed, for a maximum period of up to 12 months at a cost of £325,000, be approved.

34/23

Street Lighting Policy

Cabinet considered a report, which referred to the introduction by the Council, in January 2022, of a borough wide variable light level trial as part of the 22/23 MTFS (22/23 PLA SAV 06). The report described the trial completed by the Council and summarised both the environmental and financial benefits that would be realised through energy saving annually by adopting the trial as the standard light levels for the borough.

The report also introduced, for Executive Mayor approval, a draft 'Street Lighting Policy' for application on all roads within the borough and made recommendations on the opportunity for further carbon reduction, energy savings and financial savings if additional studies were completed.

The Executive Mayor in Cabinet **RESOLVED** that:

1. The outcome of the pilot studies, as set out in Section 4.15 to the report, be noted.
2. The introduction of the draft 'Street Lighting Policy', as summarised in Section 3 and Appendix A to the report, be approved.
3. The trial running since 06 January 2022 be formalised and the pilot regime of 50% reduction in light levels in residential streets between 7pm and 5am and 50% reduction along main traffic routes from Midnight and 5am, be adopted.
4. Officers be authorised to undertake further pilot studies within the framework of the draft Street Lighting Policy, to reduce energy consumption and CO2 emissions from the street lighting infrastructure across the borough and report back to a future meeting of the Cabinet.

35/23

Local Planning Authority Service Transformation

Cabinet considered a report, which set out the draft planning transformation programme for the Local Planning Authority (LPA) with the aim of delivering sustained improvement to performance and customer experience, whilst responding to feedback from residents and applicants and delivering the future spatial development needs of the borough.

It was reported that the (LPA) required a significant transformation programme following a period of sustained budget reductions over recent years. Also, since the May 2022 election, the Executive's Mayor had made improving the Council's planning service a priority.

It was further reported that an independent Planning Advisory Service (PAS) review had identified the need to transform the planning service and the report outlined how the service would respond to the recommendations made by the PAS review through establishing and delivering a Planning Transformation Programme, which would also deliver the priorities within the Executive Mayor's Business Plan, enable the service to adjust to proposed national planning reforms, and respond to feedback from residents and applicants.

The report advised that the Planning Advisory Service (PAS) had been invited to undertake a Development Management Process Review and a Peer Challenge and from the recommendations made and engagement with PAS, a Draft Transformation Action Plan for the Development Management workstream had been prepared, which would be finalised following engagement with the wider officer group, the development community and Residents' Associations.

The Executive Mayor, in Cabinet, **RESOLVED** that:

1. The draft Planning Transformation Programme structure, including the programme's high level workstreams, future governance and next steps, be approved.
2. The Corporate Director of Sustainable Communities, Regeneration and Economic Recovery, following further consultation with the Cabinet Member for Planning and Regeneration, be authorised to prepare the Final Planning Transformation Programme.

36/23

Annual Delivering the Croydon Growth Zone Report – 2023/24

Cabinet considered the annual report, which set out proposals for the Growth Zone budget and programme for 2023/24. It reflected the Executive Mayor's Business Plan 2022 – 2026, the need to support the approach to recovery and renewal of Croydon town centre following the devastating socio-economic impact of the coronavirus pandemic, challenging macro-economic conditions and the implications for development activity. It was noted that the Growth Zone income was ring fenced by the Statutory Instrument and provided an additional funding source, which positively contributed to the Council's financial position.

The report also set out high level detail for the Growth Zone Programme of £12,261,000 for financial year 2023/24 and a further report would be submitted to Cabinet in the 23/24 financial year identifying the expenditure proposed for the financial year 2024/25 and to take account of the Government's recent disappointing announcement that the Council's

submission for Levelling Up Funding had been unsuccessful (as detailed in Paragraph 4.8 to the report).

The Executive Mayor, in Cabinet, **RESOLVED** that:

1. A £12,261,000 budget for the 'Delivering the Growth Zone' programme 2023/24, be approved.
2. The indicative funding profile for Growth Zone Sub-Groups and projects, as detailed in Table 1 of the report, be noted.
3. Subject to the requirement to comply with the provisions of Part 4G of the Constitution in taking delegated decisions, and the parameters previously approved in the March 2021 Cabinet report 'Delivering the Growth Zone', the Corporate Director of Sustainable Communities, Regeneration and Economic Recovery, in consultation with the Chief Finance Officer (Section 151) and the Cabinet Member for Planning and Regeneration, be authorised to make necessary changes to the funding assigned to Sub-Groups, as outlined in Table 1 to the report.

The meeting was declared closed at 8.43pm

EXECUTIVE MAYOR

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MINUTES of the **ADDITIONAL** Meeting of the **CABINET** held on Monday 6 March 2023 at 6.30pm in the Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX

Present: Executive Mayor Jason Perry (Chair);

Councillors Jason Cummings (Cabinet Member for Finance), Maria Gatland (Cabinet Member for Children and Young People), Lynne Hale (Deputy (Statutory) Executive Mayor and Cabinet Member for Homes (Vice-Chair)), Yvette Hopley (Cabinet Member for Health and Adult Social Care), Ola Kolade (Cabinet Member for Community Safety), and Andy Stranack (Cabinet Member for Communities and Culture).

Also Present: Councillors Ben Hassell (remotely), Bonello, Clark, King, Mollyneaux and Young OBE.

PART A

37/23 Apologies for Absence

There were no apologies for absence received from Members.

38/23 Disclosure of Interests

There were no declarations of interest received from Members.

39/23 Any Urgent Business

There were no items of urgent business.

40/23 Appointments

There were no executive functions appointments made.

41/23 Re-procurement of Responsive Repairs Contract - Contract Award

The Executive Mayor announced that the following would be considered in two parts. Firstly, in open session, the Part A report and, later in the meeting, in closed session, the Part B (exempt – not for publication) report, which contained sensitive information around the legal contract process.

Given the nature of the information contained within the Part B report (i.e., contractual standstill process), the Executive Mayor expressed his frustration that he would not be able to disclose, publicly, the successful contractors at this meeting but assured all present that this would be made public as soon as the Council was legally able to do so.

The Executive Mayor said that improving the Borough's housing stock had been a priority for his administration and, at his first Cabinet meeting as Executive Mayor, had agreed a new Residents' Charter built around respect and listening to Croydon's tenants. In this connection, he said that a wide-ranging housing transformation plan had also been agreed last year which, with time, would deliver significant improvements across the board.

The Executive Mayor went on to say that, in December, the Council had begun to consult residents on options for the refurbishment, demolition and redevelopment of Regina Road, the estate which, he said, had been allowed to decline to appalling conditions and had become the symbol of the previous Administration's total failure to care for the residents they were meant to represent. He said that complaints in respect of mould, damp etc. had gone unchallenged.

The Executive Mayor said that tonight's meeting heralded the next step in his administration's improvement journey by awarding a new housing repairs contract, which would improve the service that residents received. He said that, throughout this tendering process, residents had been at the heart from services and priorities for the contract to focus groups on the specifications and resident involvement in the bidder evaluation.

The Executive Mayor said that this new service had been designed for and by the Borough's residents – the Council's customers. He said that the Council would also improve its contract management arrangements by building-in penalties which had not existed previously and allow the Council to act where performance was not hitting acceptable levels.

These major contracts would provide wider benefits to Croydon's community with social value clauses built-in, which would increase skills and employment opportunities for local people and support Croydon businesses by encouraging greater use of local supply chains.

The Executive Mayor acknowledged there may be teething problems along the way and potential challenges arising from the transition from the current to the new contractors, which would not be fixed overnight by the new arrangements.

In conclusion, the Executive Mayor said that this new approach to housing repairs, led by the commitments in the Residents' Charter, would mark a step change for Croydon's tenants and residents and this was something that everyone should welcome.

The Cabinet Member for Homes (and Deputy (Statutory) Executive Mayor), Councillor Lynne Hale, in thanking officers and tenants for their dedicated work in this matter, referred to the Part A report, which set out the procurement process that the Council had undertaken in relation to the Re-procurement of the Housing Responsive Repair Contract. It was

reported that, in accordance with the approved strategy, this was being split into the following four parts going forwards.

- (i) Contact Centre – to be brought back in-house (to ensure the Council did not lose touch with its residents and to allow a strong overview to tackle any emerging problems across the Council's estates.)
- (ii) Area 1 Responsive repairs and voids excluding heating.
- (iii) Area 2 Responsive repairs and voids excluding heating.
- (iv) Heating related services.

Councillor Hale provided the detail to each of the components of the contracts and reiterated the role residents had played to this stage and would play in monitoring the services moving forward to ensure their objectives and aspirations were incorporated in the design, procurement and monitoring of the contracts.

Councillor Hale said the Council's Contract management Team would be strengthened with accredited contract management training and that new contracts would be managed through new, robust contract management processes, against key performance indicators and with evolving, real-time resident satisfaction input. She reaffirmed the Administration's commitment to working with tenants and leaseholders to ensure they continued to be involved in future policies, decisions, monitoring performance and developing standards in their housing service.

The Council's Corporate Director for Housing said that this was a critical service, and the contract would address the shortcomings of the service to date as well as addressing the actual breaches of the consumer standards, which was the reason why the Regulator had intervened. This, she said, would be the first step in addressing this formally.

Officers then delivered a presentation, which summarised the key drivers and story to date; the procurement approach and how the contracts were procured; the new service and what would look different, and the project management approach to mobilisation and demobilisation.

Councillor Leila Ben Hassell, Vice-Chair of the Council's Scrutiny and Overview Committee thanked the Homes Scrutiny Sub-Committee Members and Councillor Ward for their work in this key service change. She said that reassurances had been sought on the process which led up to the appointment and that the Sub-Committee had met twice in addition to and was satisfied with the process leading up to the appointments had been robust and it recognised the value of the programme approach to this process. She said that the Sub-Committee had had some concerns about the tender process taking place over the summer but thanks to the soft market testing, the number of companies that had submitted tenders was satisfactory and had presented a real choice for Croydon's residents. She went on to say that the Sub-Committee welcomed the involvement of tenants at various stages of the procurement process.

Councillor Ben Hassell said that the Sub-Committee had also welcomed the bringing in house of the call centre, which it felt would drastically change the Council's relationship with its tenants with regards to repairs and the new contract management team being set up and being dedicated to training taking place.

She said that the Sub-Committee had sought reassurances as to the provisions within the contract to address under-performance as well as provisions to be able to adapt and provide changes in the way that the Council delivered the service e.g., where new technology or innovation could be explored in future as this was a long-term contract and the Sub-Committee had felt that both these aspects had been appropriately dealt with.

Councillor Ben Hassell said the Sub-Committee would monitor progress moving forward in particular around how the backlog was being dealt with, culture change, the delivery of the mobilisation and demobilisation phase and the finalisation of the monitoring performance framework.

The Executive Mayor welcomed to the meeting, Yao Boateng (Chair of the Tenant and Leaseholder Panel and Member of the Housing Improvement Board) and Les Parry (Vice-Chair of the Tenant and Leaseholder Panel) and invited them to address Cabinet.

Mr Boateng said that the exercise had been very rewarding for him personally as, amongst other things, it had tested his reasoning ability and was as fair as it could have been.

Mr Parry said that the view from tenants across the borough was that the current service provider, did not provide the service, was not fit for purpose and had let the tenants down. At that time, he said, the tenants did not know that they were paying for that service, that they were the customers, that they demanded a service for the money that they paid but that now, they did.

Mr Parry recognised the meetings and engagement the Council's Officers had had with the residents. He said that residents had listed many improvements and what they wished to see and that a lot of it had been included or achieved in the negotiations with the various contractors.

Mr Parry also stressed that residents engaged in any conversation because it was the tenants' service and their money, and it was for Councillors to facilitate and deliver what the tenants wanted and deserved and he felt that this had been done through this process. Officers then responded to questions put by Members.

Exclusion of Press and Public

The Executive Mayor stated that the meeting would need to pass a resolution to move to private session and temporarily turn off the webcast in order that Members could consider the Part B Report. Accordingly, it was moved, seconded and **RESOLVED** that the press and public be excluded from the meeting for the remaining item of business, on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 3 to Part 1 of Schedule 12A, as amended, to the Local Government Act 1972.

Cabinet received officer presentations on those bidders who had submitted for the works.

It was then moved, seconded and **RESOLVED** that the press and public be readmitted to the meeting (public session) to receive the decision of the Executive Mayor, in Cabinet.

The Executive Mayor thanked officers and the many residents who had contributed to the redesign of this housing repairs contract.

He said that everyone had to be realistic since, after many years of underinvestment, a new contract would not fix the deep problems in the Council's housing stock overnight. That said, he said this new approach, designed with Croydon's residents, would be a major opportunity to move forward and improve the quality and responsiveness of housing repairs in Croydon.

He went on to say that listening to residents, active contract management, penalties for poor performance and a responsive in-house contact centre were key elements in delivering a service that was fit and proper for Croydon's residents and he was therefore happy to agree the recommendations in both the Part A and Part B reports.

Accordingly, it was **RESOLVED** that:

1. The award of a contract to deliver Area 1/Lot 1 (c.70% of the housing stock) of the responsive repairs' services, optional planned programme and out-of-hours contact centre service to the Bidder C (as identified in the Part B report) for a period with an initial contract term of six years and eight months, with a break option at that point and a total maximum contract duration of 10 years and eight months (plus a 1-year defects liability period) for the maximum contract value stated in the Part B report, be approved.
2. The award of a contract to deliver Area 2/Lot 2 (c.30% of the housing stock) of the responsive repairs' services and optional planned programme to Bidder D (as identified in the Part B report) for a period with an initial contract term of six years and eight months, with a break option at that point and a total maximum

contract duration of 10 years and eight months (plus a 1-year defects liability period) for the maximum contract value stated in the Part B report, be approved.

3. The award of a contract to deliver Heating Services to Bidder H (as identified in the Part B report) for a period with an initial contract term of six years and eight months, with a break option at that point and a total maximum contract duration of 10 years and eight months (plus a 1-year defects liability period) for the maximum contract value stated in the Part B report, be approved.
4. The break options referred to in recommendations 1 to 3 above would follow the same governance process as a permitted extension under the Tenders and Contracts Regulations (as amended), be noted.
5. Following recommendation 1.2 of the Procurement Strategy report, the outcome of the affordability analysis for the contact centre was to in-source the service from 8am-6pm, with the out-of-hours element being outsourced, be noted. *(The contact centre out-of-hours element was included in the procurement process and the recommended award was included in recommendation 1 above to the Lot 1 bidder.)*
6. The fact that, as part of the Tender submission, all contractors were asked to submit a price to take the calls out-of-hours for both Lot 1, Lot 2, and Heating emergencies, be noted. *(This would now be used to compare with the Council providing its own Out of Hours Service in terms of cost and quality.)*
7. The fact that the successful providers' names would be made public after the decision was made, be noted.

The meeting was declared closed at 7.23pm

EXECUTIVE MAYOR

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
London Borough of Croydon
(reference number: 21 013 878)**

28 November 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms B	the complainant
Mr C	her son
School X	a school attended by Mr C until April 2021
School Y	a school attended by Mr C from May 2021
CP1	a respite care provider
CP2	another respite care provider
CP3	another respite care provider
CP4	another respite care provider
CP5	another respite care provider (identity unknown)

Report summary

Adult care services & children's services – respite care provision

Ms B complained that after October 2019 the Council did not support her in arranging suitable respite care for her disabled son, Mr C. Ms B made separate complaints to the Council's children and adult care services as her complaint spanned the time when Mr C moved between the two services.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The Council should provide Ms B with the following personal remedy.

- An unqualified apology from a senior officer (Director level or above) recognising the injustice she has been caused.
- A payment of £3,000 to recognise the loss of service experienced by her and Mr C; it should pay Ms B £500 to recognise her distress and an additional £500 to recognise her time and trouble – making £4,000 in total.
- Agree that for so long as it is needed the Council will provide Ms B with direct payments to fund respite care for Mr C, from his existing respite provider, at the same level he received before October 2019. It can withdraw this support once Mr C moves to another placement where such respite is no longer needed (he is due to move to supported living accommodation soon).

The Council should also undertake the following procedural improvements.

- It should carry out further work to understand why, when Mr C was a client of its children's services, it did not do more to search for, or record, how his respite care needs could be met between December 2019 and December 2020.
- End its practice of delaying the registration of stage two complaints made under the statutory complaint process for children's complaints to await clarification or meetings.
- Brief all staff in its transitions service to make it clear the Council should not seek to refuse or limit care choices based on cost, or through comparison with national or local averages.

The complaint

1. We have called the complainant Ms B. She cares for her disabled son who we have called Mr C. Ms B complained that after October 2019 the Council did not support her in arranging suitable respite care for Mr C. Ms B has made separate complaints to the Council's children and adult care services as this complaint spans the time when Mr C moved between the two. This single investigation covers both complaints as well as a supplementary complaint made on Ms B's behalf from a charity which has supported her.
2. Ms B says because Mr C has not received adequate respite care since October 2019 she has been left feeling exhausted. She says by not identifying suitable provision, nor paying for adequate provision once a suitable provider was found, the Council has increased her anxiety and Mr C has also been stressed and unsettled. Ms B says she was left "*feeling terrified of the next call from social services pressurising [me] or being shouted at to try provider after provider when I know they couldn't meet [Mr C's] needs*". Ms B says she attended counselling and tried alternative therapies to help cope with the impact of not having enough support. She says the Council's actions left her at "*breaking point*".

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

The Council's responsibilities towards disabled children and their parents/carers

6. Section 17 of the Children Act 1989 says councils must safeguard and promote the welfare of children within their area who are in need. A child is in need if they are disabled. Services provided under the Act can be offered to parents as well as children.
7. The Chronically Sick and Disabled Person's Act (CSDPA) 1970, section 2, requires councils, when undertaking an assessment of a child under section 17 of the Children Act 1989, to consider whether it is necessary to provide support including respite care. This is temporary care given or arranged by the council to provide relief for the disabled person's regular carer.
8. If a council is satisfied it is 'necessary' to provide support services under section 2 of the CSDPA then services must be provided regardless of the council's resources.

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9. Under the Children and Families Act 2014 a council must assess whether a parent carer within their area has needs for support and if so, what those needs are.

The Children Act statutory complaints procedures

10. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The accompanying statutory guidance, '*Getting the Best from Complaints*', explains councils' responsibilities in more detail.
11. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond.
12. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two. At this stage of the procedure, councils appoint an investigator and an independent person who is responsible for overseeing the investigation.
13. If a complainant is unhappy with the outcome of the stage two investigation, they can ask for a stage three review by an independent panel.
14. We published a [focus report in 2015](#) highlighting common failings in the way councils deal with complaints that are within the remit of the children's statutory procedure. In 2021 we issued [further guidance for practitioners](#) setting out our expectations on how statutory complaints should be handled and managed.
15. Among other matters this guidance explains:
 - the decision on whether a complaint should progress to stage two of the statutory procedure rests with the complainant and not the council;
 - any meetings with a complainant to discuss a complaint after stage one or stage two of the process should not unnecessarily delay progression to the next stage;
 - that Government guidance says the stage two process – from the time the complainant requests a stage two investigation through to the council giving its response to an investigation report – should take no more than 65 working days; *and*
 - that we will not usually investigate complaints that have not completed all three stages of the statutory procedure although an exception can be made using our discretion where appropriate.

Transitions and care planning for adults

16. When a child reaches 18 years of age, they are legally an adult and responsibility for meeting their needs moves from the council's children's services to its adult services. The legal basis for assessing their needs changes from the Children Act 1989 to the Care Act 2014. Transition assessments should begin when the council can be reasonably confident about what the young person's needs for care and support will look like when they turn 18. Where a child has an Education, Care and Health Plan (EHCP) a council can continue to provide children's services for as long as it is considered necessary. In addition, the Care Act 2014 requires local authorities to ensure there is no gap in support when an individual makes the transition from children's to adult services on or after their eighteenth birthday. (*see Special Educational Needs Code of Practice S9.139 & 9.140*).
17. The Care Act 2014 gives councils a legal responsibility to provide a care and support plan. The support plan must include a personal budget, which is the

money the council has worked out it will cost to arrange the necessary care and support for that person.

18. A personal budget must always be an amount sufficient to meet the person's care and support needs and users of services should have confidence it will be sufficient. Decisions on personal budgets should be based on outcomes and value for money rather than purely financially motivated. (*Care and Support Statutory Guidance 2014*)
19. A personal budget can be paid to a user of services or their carer as a direct payment. This means the person receiving care or their carer, can contract directly with third parties who can then provide the care set out in the care and support plan.

Carer's assessment

20. Where somebody provides or intends to provide care for another adult and it appears the carer may have a need for support, the council must carry out a carer's assessment. A carer's assessment must seek to find out not only the carer's needs for support, but also the sustainability of the caring role itself. This includes the practical and emotional support the carer provides to the adult.
21. As part of the carer's assessment, the council must consider the carer's potential future needs for support. It must also consider whether the carer is, and will continue to be, able and willing to care for the adult needing care. (*Care and Support Statutory Guidance 2014*)
22. The Care Act 2014 says the council may meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how the council will meet them. The carer's personal budget must be an amount that enables the carer to meet their needs to continue to fulfil their caring role. It must also consider what the carer wishes to achieve in their day-to-day life. (*Care and Support Statutory Guidance 2014*)

How we considered this complaint

23. Before issuing this report we considered:
 - Ms B's written complaint to us and any supporting information she provided including that gathered in telephone calls and emails;
 - correspondence exchanged between Ms B and the Council about the matters covered by this complaint which pre-dated this investigation;
 - information provided by the Council in reply to our written enquiries;
 - any relevant law, guidance or Council procedure referred to in the text above;
and
 - our published guidance, including our guidance on remedies.
24. Ms B and the Council had an opportunity to comment on a draft of this report and to provide any further evidence they considered relevant to the content. We took account of any comments they made and/or further evidence provided before issuing this final report.

What we found

Background and chronology

25. Mr C is a young adult with autism and attention deficit hyperactivity disorder (ADHD). He is largely non-verbal. He sleeps poorly. He displays a range of challenging behaviours including hitting, slapping, kicking and damaging property. He may also try and run away when distressed. Mr C needs skilled carers who understand and know how to meet his needs.
26. Mr C was 16 years old in October 2019. He attended School X (a residential school) as a day pupil, meaning he spent most evenings, weekends and holidays with Ms B. But the school also provided respite care for Mr C. He would stay overnight one night a week during term time and two nights a week during school holidays. The Council's children's services paid for this respite care as part of a package of care it gave Ms B to support her in caring for Mr C. This also provided for Ms B to use a direct payment to purchase care from a care agency to support her in meeting Mr C's needs when he was at home at a two-to-one staffing ratio.
27. In October 2019 School X suspended its respite provision. Initially this was while the school was refurbished. But in December 2019 School X told the Council it would not be resuming overnight respite care for day pupils. School X said this would apply from February 2020, although in effect Mr C's respite care had already stopped at this point.
28. The Council's children's services made some checks with a respite service that it runs and which Mr C used to attend. However, he had stopped using it because it could not meet his needs. He would also not be able to use it once he turned 18. The Council therefore did not pursue this option. The records do not show when, during 2020, these checks took place.
29. In March 2020, the Council also made an enquiry of a different residential school which provides respite care. But that school said it could not provide respite care to Mr C as he was a pupil at School X. There is no record children's services made any other enquiries about respite care options for Mr C. In August 2020 the Council asked School X if it had any vacancies for Mr C as a residential pupil. At the time, it did not.
30. In December 2020, Ms B made a complaint as over 12 months had passed since Mr C last received respite care. The Council replied later that month, under stage one of the children's complaint procedure. It said the lack of respite for Mr C was because of events largely outside its control. First, that School X had stopped providing respite for day pupils. Second, that the COVID-19 pandemic had left limited choice available. The Council said to help meet Ms B's need to provide care it had increased her direct payments to cover 45 hours of care a week.
31. In January 2021, Ms B escalated her complaint. She sent the Council copies of multiple text messages to social work staff where she had been raising her need for respite care. She said it was wrong to say direct payments had increased to pay for more care for Mr C when School X stopped providing respite. Because the increase in payments took place in October 2019, before School X took its decision to stop his respite care. Also, because the increase in direct payments was to fund therapeutic work with Mr C which Ms B took part in.
32. The Council replied to that letter in February 2021. It did not register Ms B's complaint at stage two of the statutory complaint procedure. Instead, a manager wrote back to Ms B offering clarification of the Council's position.

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33. In response, Ms B wrote again and said she wanted an independent investigation of her complaint. She said that she was at her “*wits end*” having no respite care for Mr C. Ms B noted she had just completed a parent carer’s assessment with support from a charity. This identified that Ms B’s desired outcome was for Mr C to attend a part-residential school that could offer some overnight respite during school holidays.
34. Around this time, School X received a negative inspection report from Ofsted. The Council decided it would no longer support children attending School X due to the concerns outlined in the report. It agreed to fund Mr C’s placement until the end of the spring term only, meaning Mr C would need a new school from April 2021.
35. The Council immediately began approaching alternative schools to see if they could meet Mr C’s needs. School Y was the only school which said it could offer a place to Mr C. It is not a residential school and so offers no respite care. There was a gap of several weeks before Mr C could start at School Y. In the interim Ms B expressed concern about how she could meet his needs.
36. By now, with Mr C approaching his eighteenth birthday, the Council had transferred his case to its transitions service, which is part of its adult care service. In April 2021 the transitions service identified a Care Provider (CP1) who said it could provide respite care for Mr C and arranged a trial of its services. The Council says it understood CP1 knew about Mr C’s complex needs. But the trial was unsuccessful as after just one night, CP1 said it could not meet Mr C’s needs.
37. In May 2021 the Council’s transitions service completed a needs assessment of Mr C. This recorded that Ms B was struggling to meet Mr C’s needs since the loss of respite care and meeting those needs was becoming “*increasingly challenging*” as he became older and more energetic.
38. The assessment said Ms B needed a personal budget of £410 a week. It said that would enable two carers to support Mr C for one hour a day two days a week plus an extra three and a half hours a week one day a week. It did not mention respite care.
39. Also in May 2021, Ms B went to a meeting with the Council to discuss her complaint with children’s services. The Council wrote to Ms B confirming the work that its transitions service and education service were undertaking at that time. In a reply sent by email Ms B made clear she did not regard the current level of support as satisfactory. She said she wanted to pursue her complaint. But the Council still did not register it at stage two of the children’s complaint procedure. Instead, it again asked her to clarify her concerns. It said: “*We always try to encourage services and complainants to try and resolve matters before progression to the next stage*”.
40. Ms B again said she wanted to pursue her complaint and in June 2021 the Council registered it under stage two of the children’s complaint procedure. It appointed an independent investigating officer (IO) and an independent person. Ms B agreed with the IO that their investigation would look at the following.
- Why Mr C had not received respite care since October 2019.
 - Why a residential care placement had not been arranged for Mr C.
 - Whether direct payments Ms B received were to support respite care; Ms B reported that when carers were at home with Mr C she did not have any respite from her caring needs as Mr C would still demand her attention.

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- What response the Council had given to Ms B's parent carer's assessment undertaken by the charity in March 2021.
41. By July 2021 Ms B had found a respite care provider which indicated it could meet Mr C's needs. We will call this Care Provider CP2. Its cost for meeting Mr C's needs over 24 hours was £779.
 42. At this time the Council had frozen direct payments to Ms B as there was an unspent balance in the account. The Council told Ms B she could use that money if she wanted to buy respite care from CP2. But the Council also told Ms B it had concerns about the extent of respite she wanted for Mr C. It said that if it funded one night a week that would be "*more than twice the UK average*". In further exchanges in July 2021 the Council said it would only pay Ms B £562 a week as a direct payment going forward. It said this would be enough to buy one night's respite care and "*a few hours*" of additional care. The Council said it also expected Ms B to keep looking for alternative respite care providers to CP2.
 43. In July 2021 the Council entered negotiation with another care provider, who we will call CP3. Initially that provider quoted an amount for care that envisaged Mr C receiving two-to-one support in view of his needs. The Council rejected this as too expensive. Later, CP3 agreed to drop the price quoted for care and Ms B met with it and was positive about the care it offered. CP3 contacted the Council further to its meeting with Ms B and said again Mr C would need two-to-one care.
 44. Also in July 2021, the Council registered a second complaint from Ms B about the transitions service. Ms B complained about the continuing lack of respite care and that the Council would not pay for respite from CP2.
 45. In August 2021 the Council identified another Care Provider, who we will call CP4, which it understood could meet Mr C's needs. It noted this in a reply to Ms B's complaint of July 2021. The Council said it had to consider cost when deciding what care it could provide.
 46. Ms B visited CP4's care setting. She found CP4 could only offer one-to-one support for Mr C. She also noted the setting appeared insecure and Ms B had concerns that Mr C could easily run away if distressed.
 47. In September 2021 a clinical psychologist undertook an assessment of Mr C. Their report said Mr C "*should receive respite during the school holidays and term time, for at least 2 nights a week. Any setting for [Mr C] must have secured buildings and grounds that [Mr C] could not independently leave (including locks on windows at all levels). He should have two-to-one provider care, or at a minimum greater than one-to-one (i.e. a higher number of staff than pupils/residents) [...] [Mr C] is a tall, strong, and physical young man and his environment must be equipped with the appropriate physical structures and staffing levels to keep him safe.*"
 48. In the same month the Council agreed Ms B could trial a placement with Mr C at CP2.
 49. While the trial was ongoing the Council remained in discussion with CP3. It continued to express the view that Mr C needed two-to-one care and referred to the clinical psychologist assessment in support of this. The Council responded saying there was "*no evidence*" Mr C needed two-to-one care except when in the community. Shortly afterwards CP3 advised the placement it had in mind for Mr C was no longer available.

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50. Mr C's trial respite with CP2 went well and so in November 2021 Ms B asked if the Council would fund this on an ongoing basis. In reply the Council said: "*the local authority must consider its own finances and budgetary position and must comply with related public law duties in determining how to meet needs including ensuring that the funding available to the local authority is sufficient to meet the needs of entire local population*". The Council therefore gave no indication it would increase direct payments to pay for Mr C to have respite care provided by CP2. It told Ms B it would continue to look for an alternative.
51. In December 2021 the IO issued their report into Ms B's complaint at stage two of the children's complaint procedure. The report explained the IO had faced difficulties in obtaining information from School X, which they considered necessary for their report and this caused delay. The report found:
- a lack of evidence the Council had looked for respite care for Mr C after October 2019. The report noted challenges to the Council during the pandemic and efforts made by the transitions team. But it found overall there had been a significant, unjustified delay in securing respite care for Mr C;
 - the direct payments made to Ms B did not offer her a chance of respite from caring for Mr C;
 - the Council had considered if Mr C needed a residential placement for the purposes of his education when he had been a day pupil at School X. Its judgement that Mr C did not need a residential placement at that time was one it could reasonably reach on the facts; *and*
 - the Council was not at fault for its response to Ms B's parent carer's assessment, as its consideration of that matter remained ongoing.
52. The report recommended the Council:
- apologise to Ms B for the faults found;
 - improve record keeping in places;
 - provide a clear commitment about what service it would offer Mr C moving forward; *and*
 - give a written response to carer's assessments in the future explaining how it proposed to meet needs.
53. Later in December 2021, the charity supporting Ms B made a further complaint on her behalf. It said that Ms B could not afford outstanding care costs and to pay for respite care from her direct payments and could not fund both moving forward. In response, the Council said it continued to look for respite care options for Mr C.
54. In January 2022 the Council increased the direct payment given to Ms B to £1,100 a week. It sent an email to Ms B which explained it had increased the payment. But the email did not explain the rationale for the award, which the Council says was to allow Ms B to purchase one night respite care at a rate of £500 a night and use the remainder to fund 48 hours of one-to-one care by employing a personal assistant.
55. Later that month the Council responded to the IO report. It accepted the findings and apologised. It also offered Ms B £100 for her time and trouble given delays in the complaint process. It agreed the service improvements. It said that as Ms B now received £1,100 a week as a direct payment, she could buy respite care with that. It said that the transitions team had discussed offering a supported living or

-
- residential care package to Mr C in the future and that Ms B should contact that service if she wanted to discuss that further.
56. Around the same time the charity wrote again to the Council and explained Ms B could only afford one night's respite care with CP2 with reduced hours of two-to-one support to meet Mr C's needs at other times. Ms B says her direct payments only enabled her to purchase one night respite; taxi journeys for Mr C and four hours care from an agency at a two-to-one staffing ratio. Ms B would not buy in care from an agency during holidays so she could afford more respite.
57. In January 2022 the Council offered to put Ms B in contact with another respite care provider to see if it could assess Mr C to meet his needs. In her reply Ms B questioned if it would be in Mr C's best interests to have a different provider as he had settled with CP2.
58. Then, in February 2022, the Council said it had found another respite care provider, which we will call CP5, who could provide respite care at £500 a night. It has told us that it gave details of this provider in a telephone call to Ms B. But it has not provided us with any details of CP5 (so it has not clarified if this was the same provider which it told Ms B about in January 2022). It has not provided any record of what consultation it undertook with CP5 nor what service it offered to provide.
59. In general comments to us the Council has repeatedly said it believes Ms B could buy respite care for Mr C at £500 a night saying its staff must consider the "*best value and the most cost-effective options to meet assessed needs*". It also said it considered one night a week sufficient to meet Mr C's needs and this would be more than what it "*usually offers*" for respite care.
60. In May 2022 the Council appointed a new social worker to support Mr C. Following discussions with Ms B they agreed to look for a full-time residential placement for Mr C. In September 2022 Mr C was offered a placement in supported living accommodation with a care provider who also runs a college suitable to meet his needs. The placement will be permanent and full-time. Mr C's move was expected to complete around December 2022.
61. In comments on a draft of this report the Council said that further to the events discussed above it had drawn up a new 'framework' of providers that can meet respite care for children with disabilities. It considers this will help prevent a repeat of the difficulties that service found in finding a respite placement for Mr C.

Findings

Ombudsman's approach to investigation

62. At the outset we note Ms B's overarching complaint about a lack of suitable respite care for Mr C has been through two different complaint procedures, including the statutory children's complaint procedure set out above. We note the complaint did not complete all stages of that procedure, as Ms B did not escalate it to the third stage of the process which involves referral to a review board. Usually, we would expect a complainant to complete the process in full before investigating their complaint.
63. However, in this instance we have decided that it is appropriate we investigate Ms B's complaint made through the children's statutory procedure despite her not completing it. Our reasons are as follows.

- First, there is clearly an overlap between Ms B's complaints made against children's and adult services. The thread connecting the two is a complaint about a lack of adequate respite care and the two complaints cover a continuum of events.
- Second, the most significant parts of Ms B's complaint investigated under the Children's Act procedure were upheld at stage two.
- Third, it is not clear that referring the children's services complaint to stage three of the procedure would be of practical benefit to Ms B or Mr C at this stage, given he is no longer a client of that service.
- Fourth, to avoid further delay; given the delays in the operation of the children's complaint procedure to date which are discussed below.

Findings on the substance of the complaint

64. Mr C is a young adult with significant and complex needs, which over time are growing more challenging as he gets older and physically stronger. At the beginning of the events covered by this complaint, the Council had assessed Mr C needed a significant care package, in addition to what he received when at school. And that to recognise the demands placed on Ms B, the Council assessed Mr C needed around 64 nights a year respite care; one a week during term time and two a week during school holidays.
65. That respite care stopped in October 2019 and the Council became aware of this no later than December 2019. There has already been a thorough investigation of Ms B's complaint about how the Council reacted when alerted to this. That investigation found the Council made enquiries to its own respite service which it should already have known could no longer meet Mr C's needs. The only other action it noted were two enquiries, to School X and another residential school, to see if Mr C could either have a residential placement at School X or receive respite elsewhere. Both those enquiries met a negative response. The investigation recognised the difficulties the Council had in arranging care – both respite care and more generally – once the COVID-19 pandemic began in March 2020. But found this offered little in the way of mitigation for the Council. Its efforts were clearly inadequate. That was fault, as the Council has already accepted. We recognise also that it has apologised for this.
66. Ms B waited 12 months before reaching the point where she felt she must complain about the response of the Council's children's services. That complaint process then took a further 12 months to complete. This meant by the time the investigation outcomes were reported and responded to by the Council, Mr C's case was already being managed by its transitions service, part of adult care services.
67. We consider fault by the Council contributed to this delay. We do not find it accountable for the delays the IO experienced during their investigation, which they explained in their report. But it took six months before that for Ms B's request for an escalation of her complaint, made in January 2021, to be registered as a stage two complaint under the children's complaint procedure. So even before the IO ran into difficulties with their investigation the timescale envisaged for the stage two investigation had approximately doubled.
68. The delay in registering the complaint at stage two of the process arose because the Council wanted first to issue a clarification to Ms B; then invite her to a meeting and then request more clarification of why she wanted a stage two investigation. There is no inherent fault in the Council looking to resolve a

complaint at any stage, including when a complainant wants it to go to stage two of the process. But any efforts to resolve the complaint must run alongside the statutory process and are not an alternative to it. If the Council does not register a stage two complaint when requested then it is gatekeeping, or unjustly denying access to the complaint procedure. That is what the Council was doing here and its approach was contrary to both Government guidance and guidance we publish. This justifies a finding of fault.

69. In addition, the Council then added more unnecessary delay in its slow response to the stage two report which added several more weeks. This was further fault.
70. During the time Ms B's complaint to children's services was under investigation her need for respite care became even more acute. Because in March 2021 the Council decided it would no longer fund Mr C's placement at School X. We make no criticism of that decision and find the Council acted promptly to try and arrange alternative education for Mr C. We also accept that to transfer a pupil with significant needs like Mr C is a process always likely to take a few weeks. But we cannot find evidence of how the Council considered the implications of this gap in Mr C's education on Ms B. She had to meet even more of Mr C's care needs as a result. We have not seen any evidence of emergency care planning for Mr C to run alongside the need for emergency planning for his education. That was fault.
71. We recognise that once Mr C's case transferred to the transitions team it made some new effort to find respite care for Mr C. We do not consider any fault attaches to the Council for the failure of the provider, CP1, to meet his needs during the respite trial in April. But the Council did not heed the lessons of that failure. If a care provider which claimed to be experienced in meeting the needs of young adults like Mr C could not meet his needs, then this should have led the Council to make extra checks of providers to ensure they were suitable.
72. Yet the evidence is that it did not do this. The Council put forward CP4 without evidence it was a viable option. We find there are some grounds for thinking the provider CP3 unrealistically raised expectations it had an available placement to meet Mr C's needs. But it is also evident that negotiations with that provider were delayed because the Council was seeking quotes for one-to-one provision despite the numerous references in the papers to Mr C needing two-to-one care; something CP3 also believed Mr C needed. The Council has also not provided any evidence for its contention the provider CP5 could meet Mr C's needs, with its emphasis being on the cost of that care not its suitability.
73. This shows the fundamental flaw in the Council's approach to meeting Mr C's need for respite care. Its approach to meeting his needs has clearly been budget driven and not needs driven. Its social worker and managers have made statements quoted above, to both Ms B and to us, which show this (see paragraphs 42, 50 and 59). The Council based its approach on what respite care Mr C needed by measuring against a benchmark of what is provided by way of a national average, or average in the Council's area.
74. This was the wrong approach. Government guidance accepts value for money can be a consideration for the Council when deciding how to meet an individual's care needs. But it can **never** replace the requirements that care planning should be outcome led and personal budgets must be sufficient to meet needs.
75. The Council did not carry out adequate care planning in this case. In particular we note the only evidence of a carer's assessment for Ms B was that completed as a 'parent-carer'. The Council never offered an adequate response to that and in any

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- event by the time it was completed Mr C's case had transferred to its adult care services. So, the Council had a duty to undertake a carer's assessment that would be compliant with the requirements of the Care Act 2014 and provide Ms B with her own support plan. It did not do this. That was fault.
76. Without undertaking such an assessment and knowing what needs Ms B was able and willing to provide, the Council could not properly assess which of Mr C's needs it should meet. It failed to assess how many nights a year respite Mr C needed. Added to which, its assessments failed to identify how many hours of additional care Mr C needed. That too was fault.
 77. Consequently, the Council failed to set a realistic personal budget to address Ms B's and Mr C's needs. We note the initial personal budget set by its transitions team did not take any account of need for respite at all.
 78. From summer 2021 onward, the Council relied on assertions Mr C had enough money in his direct payment account to pay for respite, without evidencing this was so. Because even if the Council could show that Mr C did not need more than one night a week respite (which it did not) and that such respite care could be met for £500 a night (which it did not) - it did not provide any evidence the direct payments given to Ms B were enough to meet the need for respite and Mr C's other care needs. It also failed to give Ms B any explanation for its direct payment award, setting out its thinking, flawed as it was.
 79. These facts reflect that the Council has approached this case with no regard to the most basic principles of care planning set out above. Given that this case has passed through several pairs of hands, including senior managers, it is not credible the Council would not be aware of this. This suggests a systemic failure has underpinned the poor service Ms B and Mr C have received, with the Council putting budgetary considerations above meeting individual needs.
 80. The evidence also does not support the Council's contention that Ms B rejected discussions around longer-term care options for Mr C such as supported living or residential care. The stage two report completed under the children's complaint procedure said Ms B would prefer to resolve the issue over respite care before looking at such options. But against this are many statements made by Ms B where she asked the Council to look at a residential placement for her son.
 81. For all the reasons above, there was significant further fault in the way in which the Council approached meeting Mr C's needs after his case passed from its children's services to its transitions service. We turn below to the injustice this caused Ms B and Mr C and make recommendations for how that injustice can be remedied. In doing so, we start from the position that all assessments of need and care and support planning done by the Council's transitions service before May 2022 were inherently unreliable. Because the Council did not begin from the position of undertaking a true assessment of Ms B's and Mr C's needs but from basing its decisions on the cost of care. So, we consider the default position must be that Mr C needed at least the same level of care as he received in October 2019 – something supported by the later clinical psychology assessment.
 82. The injustice the Council's faults have caused Ms B and Mr C is as follows.
 - They suffered a prolonged and significant loss of service by having no respite care between December 2019 and August 2021 (20 months).

- They suffered a further loss of service by having inadequate respite care and insufficient funds to purchase other care Mr C needed after September 2021 (14 months and counting).
- They suffered a further loss of service when the Council withdrew funding to support Mr C's placement at School X and failed to respond to the additional burden of care that would fall on Ms B as a result.
- Ms B was caused significant unnecessary distress by the Council's approach to her son's care. She has explained in her own words, the impact of the Council's actions upon her.
- Ms B was put to significant unnecessary time, trouble and frustration by the Council's children's services complaint handling and in her contacts with its transitions service when she consistently explained the position the Council's actions had put her in.

Recommended action

83. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
84. To remedy the injustice set out above, we recommend the Council should, within one month of the date of this report:
- provide Ms B with an unqualified apology from a senior officer (Director level or above) recognising the injustice she has been caused;
 - pay Ms B £3,000 to recognise the loss of service experienced by her and Mr C outlined above; pay Ms B £500 to recognise her distress and an additional £500 to recognise her time and trouble – making £4,000 in total; *and*
 - agree that for so long as it is needed the Council will provide Ms B with direct payments to fund respite care for Mr C, from his existing respite provider, at the same level he received before October 2019. It can withdraw this support once Mr C moves to another placement where such respite is no longer needed (we note Mr C is due to move to a supported living placement soon).
85. In addition, we note that decisions around what support Mr C needs moving forward will not only involve social care services but also education and possibly health services. Mr C has an Education, Health and Care Plan and planning for that must necessarily involve social care input. We note here also that in so much as that plan may name an education institution Ms B disagrees with, she will also have rights of appeal to an independent Special Educational Needs and Disability tribunal.
86. In addition to the actions set out above designed to remedy Ms B's and Mr C's personal injustice, the Council should want to learn lessons from this complaint. We therefore further recommend that within three months of the date of this report it should:
- carry out more work to understand why, when Mr C was a client of its children's services, the Council did not do more to search for, or record, how his respite care needs could be met between December 2019 and December 2020. The Council should undertake research to establish if this was a one-off service failure or symptomatic of any wider failings in its children's services in

identifying suitable respite placements. If it is the latter, then the Council should produce an action plan setting out measures designed to prevent a repeat which can include reference to the new framework with respite care providers it referred to in response to our draft report;

- give a commitment that it will end its practice of delaying the registration of stage two complaints made under the statutory complaint process for children's complaints to await clarification or meetings; *and*
- brief all staff in its transitions service to make it clear the Council should not seek to refuse or limit care choices on basis of cost, or through comparison with national or local averages. All staff must be reminded that decisions on the care individual clients receive must be based on their assessment of need and must be sufficient to meet those needs.

Final decision

87. We find fault by the Council causing injustice to Ms B and Mr C. We recommend the Council take the action described above to remedy that injustice.
88. We have published this report because we consider it in the public interest to do so, given the injustice caused to the complainant and the wider systemic problems the complaint has revealed.