

<b>REPORT TO:</b>	<b>CABINET 21<sup>st</sup> FEBRUARY 2022</b>
<b>SUBJECT:</b>	<b>Accommodating Asylum Seekers in Croydon</b>
<b>LEAD OFFICER:</b>	<b>Katherine Kerswell - Chief Executive Debbie Jones - interim Corporate Director, Children, Young People and Education Directorate</b>
<b>CABINET MEMBER:</b>	<b>Leader of the Council Councillor Hamida Ali</b>
<b>WARDS:</b>	<b>All</b>

### **SUMMARY OF REPORT**

Following the Afghan evacuation at the end of August 2021 in early September the Home Office commissioned the Hilton Hotel on Purley Way as bridging accommodation for adults and children until it was decommissioned in mid-October 2021 and residents relocated to a hotel out of the borough.

For several years the Home Office has commissioned hotels in Croydon to provide both initial and longer term accommodation for single adults and families seeking asylum, with an estimated 200-300 residents accommodated at any one time. However over the summer of 2021 further hotels were commissioned by the Home Office rapidly increasing the number of asylum seekers accommodated in the borough to over 900 people at the end of December 2021. No additional funding is provided to local authorities as a result of these unplanned and unannounced placements by the Home Office.

The council is expected to lead and co-ordinate essential safeguarding and compliance activity to ensure people in the hotels are in an appropriate and safe living environment. A significant proportion are children of school age for whom the council has a responsibility to secure school places, despite the fact that families may be moved out of the borough at very short notice. No funding is provided to local authorities to provide these services.

Young people placed by the Home Office as adults who then dispute their initial age assessments has resulted in their coming into the council's care as children whilst the proper legal processes following the disputed age claims are completed.

Following lengthy negotiations with the Department for Education, Home Office and Department for Levelling Up and Communities a grant award of £2.357m was secured in August 2021 to address the substantial, additional and disproportionate costs falling to the council in 2021-22 as a result of the location of Lunar House in the borough. Financial modelling shows that a budget gap of £997,000 remains in 2021-22 and is currently forecast at £2.911m in 2022-23 and £2.356m in 2023-24.

Croydon continues to operate with significant financial challenges. The capitalisation direction loan means the council has to deliver on its Medium Term Financial Strategy (MTFS) to make savings of £51.239m in 2022-23 and £10.840m in 2023-24.

The Leader and Cabinet Member for Children, Young People and Learning have written to the Home Secretary to raise concerns about the funding arrangements for the Croydon's Unaccompanied Asylum Seeking Children and highlighting the forecast gap in funding over 2022-24 and asking that government review the impact of the decision to commission five hotels housing asylum seekers in Croydon and consider a more balanced distribution of any future commissions across the region.

**POLICY CONTEXT:**

This report aligns to the following Croydon Renewal Plan priorities:

- We will live within our means, balance the books and provide value for money for our residents.
- We will tackle ingrained inequality and poverty and tackling the underlying causes, such as structural racism, environmental injustice and economic injustice
- We will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy.

**FINANCIAL IMPACT:**

At the end of November 2021 the forecast budget pressure for unaccompanied asylum seeking children and care leavers is:

2021-22	£997,000
2022-23	£2.911m
2023-24	£2.356m

**KEY DECISION: N/A**

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out below.

**RECOMMENDATIONS:**

Cabinet is recommended to:

1. Note the rapid increase in asylum seekers placed by the Home Office in the borough in recent months with the resulting pressure on council and NHS services and the estimated financial impact for the council.
2. Note the forecast budget pressures for 2021-24 due to the disproportionate number of asylum seeking children and young people the council continues to care for.

3. Note the serious concerns on the reported shortcomings in health protection and environmental health in the hotels in Croydon, which are being used as medium term accommodation for families and individuals in premises that were not designed as accommodation for so many people for such long periods of time.
4. Note that the Leader and Cabinet Member for Children, Young People and Learning have written to the Secretary of State to raise serious concerns about the funding arrangements for unaccompanied asylum seeking children and young people alongside the rapidly increased number of asylum seekers placed in the borough.

## **1. Background**

- 1.1 Croydon Council has welcomed asylum seeking adults, children and young people to the borough over many years. However the location of Lunar House in the borough as a point of entry to the UK for asylum seekers has resulted in Croydon taking care responsibility for a disproportionate number of unaccompanied children and young people for many years. Following robust internal scrutiny of the financial modelling and lengthy negotiations with the DFE, Home Office and DLUCH in August 2021 a one off grant of £2.357m was awarded to the council to address the forecast budget gap as reported to cabinet on 21<sup>st</sup> August 2021.
- 1.2 The financial model is refreshed each month to capture changes in numbers, or children's ages. At 18 the grant rate from the Home Office drops significantly, from £1,701 per week to meet the costs of care to £270 per week. This is a particular issue for Croydon. The high numbers of children over several years means that 64% of care leavers were formerly unaccompanied children. As at December this was 438 young people out of 670.
- 1.3 Over the summer of 2021 additional hotels were commissioned by the Home Office leading to a rapid increase in number of single adults and families with children accommodated in the borough. Our work with London Councils indicates that the Home Office has placed the largest number of asylum seekers in Croydon compared to our regional neighbours. No funding is provided to local authorities to provide essential services required as a result of these unplanned and unannounced placements by the Home Office.
- 1.4 Croydon continues to operate with significant financial challenges. The capitalisation direction loan means the council has to deliver on its Medium Term Financial Strategy (MTFS) to make savings of £51.239m in 2022-23 and £10.84m in 2023-24. The additional service and financial pressures on the council are therefore unsustainable.

## **2. Afghan resettlement scheme**

- 2.1 On 29 December 2020 the Defence Secretary and Home Secretary announced the Afghan Relocation and Assistance Policy (ARAP) to offer relocation or other assistance to current and former locally employed staff in Afghanistan. The ARAP scheme launched on 1 April 2021, remains open and will operate indefinitely. People eligible for ARAP have the automatic opportunity to apply for indefinite leave to remain in the UK.
- 2.2 Following the fall of Kabul at the end of August 2021 the Home Office quickly commissioned hotels across the country to provide bridging accommodation for adults and children evacuated whilst permanent arrangements were put in place. The Hilton Hotel Purley Way was commissioned as a bridging hotel for 47 adults and children who arrived over 4<sup>th</sup> – 5<sup>th</sup> September 2021 following a period of quarantine. This was a relatively small number compared to other London boroughs.
- 2.3 Given the speed of the relocation little practical support was mobilised in advance and a great deal of co-ordination activity took place across the Council and its health partners with the Department for Work and Pensions, the Home Office, the DFE and with Croydon's voluntary and community sector lead organisations to quickly respond to needs. ESOL provision, support from and links with local children's centres and most importantly health screening sessions were quickly put in place. Officers from the early help service and education had begun to liaise with local schools to put support in place to induct school age children into learning, although longer term planning was hampered by the lack of clarity on the timeframe for children's residency in the borough before permanent living arrangements were secured and families moved.
- 2.4 With the relatively small cohort in Croydon the Home Office took the decision to decommission the accommodation and on 18<sup>th</sup> October residents were relocated to another bridging hotel in Hertfordshire. Officers from the council and our health partners worked closely with central government officials to ensure as smooth a transition as possible, including the transfer of health records.
- 2.5 In December 2021 Local Authority funding arrangements for wrap around support and education provision under the ARAP scheme were confirmed. Croydon was allocated £21,274 for the support for early years and school age children during their brief time at the hotel.

## **3. Adults, families and children seeking asylum**

- 3.1 For a number of years the Home Office has commissioned three hotels in the borough as initial accommodation centres. The costs of accommodation, subsistence and 'front of house' services are included in a contract between the Home Office and a commissioned provider.

- 3.2 Initial accommodation centres are hostels or lodgings for people who have asked for asylum and do not have funds to support themselves. The accommodation is short-term housing that can be full-board, half-board or self-catering. It is usually in a hostel-type environment and is for asylum seekers who need accommodation urgently, before their support applications have been fully assessed and longer-term accommodation can be arranged. The amount of time people stay in initial accommodation can vary before moving onto dispersal accommodation
- 3.3 Dispersal accommodation is longer-term temporary accommodation managed by accommodation providers on behalf of the Home Office. People seeking asylum will normally be able to stay in dispersal accommodation until their asylum claim has been fully determined although it is not always possible to stay in the same property
- 3.4 In September 2021 the Home Office commissioned another large hotel to provide initial accommodation, and despite a verbal commitment from senior officials that given Croydon's financial challenges no new hotels would be commissioned by October 2021 a further 4 were added to the estate in the borough bringing this to a total of 8.
- 3.5 Following representations from officers three of the smaller hotels were decommissioned in early December 2021. Nevertheless over 900 adults and children are currently accommodated in the borough across five hotels.



Figure 1

- 3.6 Data is shared with the council by the accommodation provider on a weekly basis. A snapshot of the data provided for 22<sup>nd</sup> December 2021 showed:
- 73% of the cohort or 688 people were male, 27% or 252 were female
  - 22% were under 18, a total of 209 children of whom 66 were under 5, 74 aged 5-10 and 69 aged 11-17
  - No first language information was available for 595 people, over half of the cohort. Figure 2 below summarises the most frequently reported first language for the remaining 345 people

First language as at 22/12/21  
 (Does not include 595 people where language is unknown)

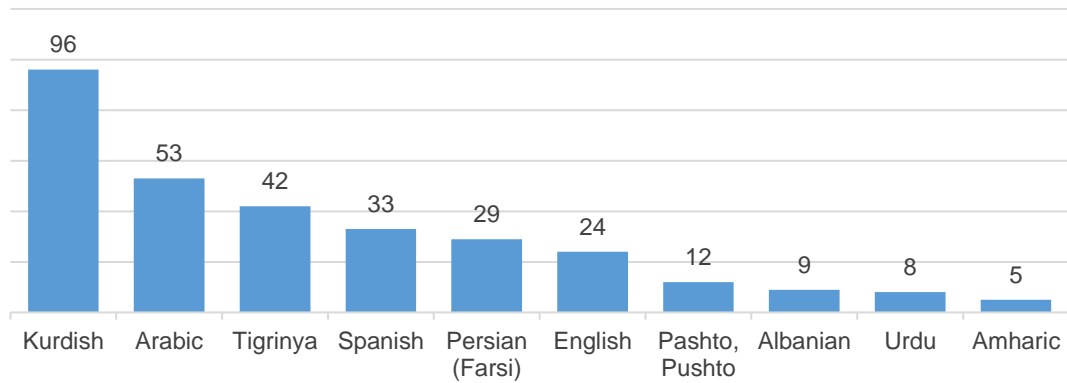


Figure 2

#### 4. Implications for Croydon

##### 4.1 Impact on the service users

- 4.1.1 To share intelligence and co-ordinate responses a weekly strategy group including senior health commissioners and providers along with officers from across the council was quickly established. An immediate priority was health screening to identify people with pre-existing conditions or unmet needs and a vaccination and immunisation programme including for Covid-19. A number of women in need of urgent pre and post natal care were identified in this way.
- 4.1.2 In Croydon a dedicated team in the NHS supports homeless residents and asylum seekers. Routinely the Rainbow Centre is funded to support around 250 asylum seekers in the Croydon. Since the crisis in Kabul, in August 2021, the Centre has been providing medical support for about 1,000. the increase of 750 refugees has placed immense pressure on the service.
- 4.1.3 To be able support the influx of asylum seekers and provide assessment of people's immediate health and care needs during their residence and protect people from the risks of COVID-19, the Rainbow Centre has employed locum GPs and nurses. Following national guidance funding is available, for the care of the additional refugees, for actual spend, up to a maximum of £51 per asylum seeker per month, and is claimed quarterly by the NHS.
- 4.1.4 Regular meetings with staff from Croydon Refugee and New Communities Forum have also taken place to share intelligence and ensure that concerns and issues raised by hotel residents with the Forum feed into the strategic meetings with the Home Office.
- 4.1.5 Strategic meetings chaired by the interim Corporate Director Children, Young People and Education, the Director of Public Health (DPH) and senior officers have been established with the Home Office commissioners and the

accommodation provider. A number of significant issues have been raised directly in these meetings in recent months:

- The hotels are not being used for the purpose that they are designed for. There are now many people including families with small children being accommodated in this way for many months, with concerns about the appropriateness of this type of accommodation being used this way.
- Over several months there have been a range of concerns about food hygiene and infestations reported by service users which led to the council's environmental health team making a number of visits to inspect premises - most recently about an ongoing cockroach infestation in one hotel.
- A long standing covid outbreak in one hotel since 17th December 2021, which the Director of Public Health has been regularly reviewing. On 28th January 2022 the Director of Public Health convened a multi-agency incident management meeting with the providers, UKHSA and members of her team and environmental health to review what actions could be further put in place.
- Following reports of children possibly being cared for by unrelated adults children's services staff have visited to review safeguarding arrangements and seek assurance on private fostering arrangements.
- Ongoing concerns for both children and adults on the risk of radicalisation. The Council arranged Prevent training for hotel staff.
- Concerns around the heightened risk of domestic abuse with many adults and children confined in small spaces. Tackling violence against women and girls training for hotel staff provided by a VCS organisation in partnership with the council.
- Families experiencing difficulty in accessing places for school-aged children. At the end of January 2022 91 school age children in the two largest hotels had been offered a school place and 80 had started school. However practical challenges such as travel costs, funding for free school meals and suitable clothing are barriers to children attending school.
- Additional vulnerabilities of this cohort of people, the majority of whom will have arrived in the UK through the perilous small boat route. There are individuals with trauma and mental health issues in accommodation that can be subject to change at very short notice.
- Personal safety concerns. In November a concealed weapon was found outside one of the hotels. Until firm assurances on safety have been received council staff are no longer delivering ESOL classes on site.
- The dispersal process is opaque to all working in the local authority, in the NHS and in the voluntary and community sector. The Home Office have been asked to avoid moving families with children in school but this has continued to happen, at times with very short notice to families.
- Access to the clinic based at Croydon University Hospital is challenging for people with mobility issues or placed some distance away as

resident do not have cash for travel costs. The turnover of residents is also impacting on continuity of care for service users.

- There has been significant turnover in staffing across the five hotels. This makes it very difficult to establish working relationships and coordinate wrap around support.
- Although the Home Office is the commissioner of the provision the Council is often perceived as responsible for the quality, for resolving concerns raised by the local community and voluntary sector and for providing services for which no additional funding is provided as it is for health needs.

4.1.6 A safeguarding assurance meeting has been established to enable the council to hold to account the Home Office as the commissioner of the hotels alongside the provider for the arrangements to safeguard vulnerable adults and children. This is to ensure that the statutory directors for children's and adults' services can be assured that robust, safe systems and processes are in place and to offer training and support to hotel staff as appropriate under Croydon's safeguarding partnership arrangements.

4.1.7 Some people have been accommodated in these contingency hotels since September 2021. Concerns have been raised by London DPHs that this may represent a material change of use to hostel or house of multiple occupation designation. DPHs are working with planning colleagues to consider the implications for local authorities' regulatory powers.

4.1.8 The in-year admissions team has worked extremely hard to work with staff based at the hotels to co-ordinate applications for school places for primary age children where the council is the admissions authority, and to support families to apply directly for secondary school places. There are places available for primary aged children in the north of the borough and headteachers have been very supportive of admitting children. However, the uncertainty on families' length of stay is having a real impact. One primary school has had 19 in-year applications from families since September 2021. Of these:

- 6 withdrew their applications as they had moved before they were offered a place
- 1 started school then moved out of borough two days later
- 1 was too old, her date of birth was recorded incorrectly by the HO
- 11 had started school

4.1.9 Schools' funding is reliant on the number of children on roll on an annual census day. Whilst there may be capacity to offer a place the turnover of children means there is no mechanism to ensure that schools are properly funded to teach children who join after the census date.

4.1.10 Families often have very few possessions and schools have reported that children do not have suitable outdoor clothing or where needed, uniforms. Free school meals are funded by the government for children in families seeking asylum but there can be delays in schools' accessing funding.



4.1.11 Utilising Household Support Funds schools who have asylum-seeking children residing in local hotels enrolled by March 2022 will be provided with a one off payment to enable them to provide:

- a free school meal every school day for each child (not eligible for free school meal funding) for 21 weeks
- a school uniform grant of £40 per primary school pupil or £80 per secondary school pupil

Funds will be transferred to schools by spring half term.

4.1.12 Local community and voluntary sector organisations have made strong representations to the council to provide practical support to families. Officers are working closely with the Refugee Day Centre to support school admissions, and will bring together local organisations and faith groups to encourage a co-ordinated approach to support on the ground.

4.1.13 Whilst it is the responsibility of the local authority to secure school places for children living in the borough the temporary nature of the accommodation presents a real challenge. As can be seen from one primary school's experience families have been moved by the Home Office before places can be taken up and even when children have started at school, which will be very unsettling for some children. At the same time schools are having to provide continuous induction for children and then manage the impact on the wider school community when children and their families are moved out of the borough.

## 4.2 Financial impact on the council

4.2.1 While Croydon stands ready to support those in need the current distribution across the region is having a disproportionate impact on the council.

4.2.2 The Home Office's commissioning of a significant number of hotels within the borough impacts on the emergency temporary accommodation available to the Council to fulfil its statutory homelessness duties. This also potentially impacts on the Council's business continuity and emergency planning resilience.

### **Young people disputing their initial age assessment**

4.2.3 On arrival at the south coast young people have been assessed as either children or adults by Home Office-employed social workers using a short age assessment tool. This has been subject to a judicial review brought on behalf of two young people to challenge the validity and accuracy of these assessments which was upheld on 19<sup>th</sup> January 2022.

4.2.4 The full implications of the ruling will take some time to work through, but is likely to be helpful because, like many other councils, Croydon has seen a

sharp increase in the numbers of young people placed by the Home Office as adults disputing the initial age assessment. Whilst social workers provide appropriate professional challenge in most cases it has been judged that the age dispute has to be given proper consideration and during this time the young person is entitled to come into care as a child.

- 4.2.5 Since October 2021 12 young people have come into the council's care from a hotel and this number is expected to increase as the asylum seeker population in the borough continues to turnover. With the National Transfer Scheme (NTS) for unaccompanied children now mandatory children are being referred for transfer to councils below the NTS threshold. 7 such transfers have taken place. However, the council incurs the costs of care pending the transfer including the allocation of a social worker and independent reviewing officer, placement with a foster carer and support to attend education.

### **Disproportionate costs of unaccompanied children and care leavers**

- 4.2.6 The financial settlement by the DFE and Home Office in respect of the disproportionate costs of unaccompanied asylum seeking children and care leavers in 2021-22 was based on financial modelling that assumed no new entrants to Croydon's care until numbers had declined to 0.07% of the child population. Future modelling will need to reflect the additional costs over the course of Croydon's care responsibilities for under 18s and for care leavers over the lifetime of the MTFS.
- 4.2.7 The financial modelling is refreshed on a monthly basis to reflect the actual number of under 18s and the number of care leavers and their entitlement to government grant support a former unaccompanied children.
- 4.2.8 Based on data at the end of November 2021 the forecast pressure for 2021-22 is £997,000. Over the next two years the modelling forecasts the following budget pressures:
- 2022-23 £2.911m
  - 2023-24 £2.356m
- 4.2.9 The variance against the 2021-22 pressure of £2.357m reported to cabinet in August 2021 is due to an increased number of care leavers not entitled to grant funding support whose care costs therefore have to be met in full by the council.
- 4.2.10 To meet the forecast pressure additional savings would need to be found on top of the existing, ambitious MTFS savings of £4.294m in 2022/23 and £2.296m in 2023/24 already agreed in Children, Families and Education.
- 4.2.11 As set out in the report to cabinet in August 2021 the only option for additional savings from April 2022 would be to end agency contracts across the directorate. The advice from the statutory Director of Children's Services remains that this level of in-year reductions would result in the council being

unable to discharge its statutory duties to all children and families in the borough, and that services would be unsafe.

### **Additional unfunded costs for asylum seekers placed in the borough**

4.2.12 Whilst the council has no control over the Home Office placements services and teams have been mobilised to provide practical support and oversight. It is difficult to assess precise additional costs a snapshot of activities over September to November 2021 has resulted in the following summary:

<b>Service area</b>	<b>Details</b>	<b>Estimated costs Sept. – Nov 2021</b>
Children's social care	Estimated staff costs for age enquiry interview by two social workers and an interpreter  Foster care at average cost of £58 per night	14,550
Early help/early years	Officer time to advise on access to early years provision  Early help support and advice on safeguarding	1,590
Education, in-year admissions	Officer time to liaise with hotel staff, headteachers  Co-ordinate applications	2,070
Environmental health	Hygiene inspections and follow up meetings	840
Adult social care	3 cases triaged for support	20
ESOL	Estimated costs of delivery  Management support and assessments	2,080
<b>Total</b>		<b>£21,150</b>

Table 1

### **Modelled longer term costs**

4.2.13 Public health analysts have estimated additional costs to the council for six months based on an assumption of the level of need for single adults and families and based on the estimated time required for initial engagement, case management, action planning and liaison. The estimated costs do not include costs to environmental health, early years provision or school admissions.

No. of Individuals	Complexity	Casework hours needed	Estimated cost
500	Low	1500 ( 3 hours average)	£102,300.00
100	Medium	550 (5.5 hrs average)	£30,250.00
100	Medium/High	1500 ( 15 hours average)	£82,500.00
200	High	5500 (27 hours average)	£302,500.00
<b>Total</b>		<b>9410</b>	<b>£517,550.00</b>

Table 2

4.2.14 Whilst these additional costs are estimates of the financial impact it is clear that despite the Home Office view that the commissioned provision meet all residents' needs this is demonstrably not the case. Hotel residents have raised persistent issues with the local VCS community and the council and its NHS partners have had no choice but to step in where safeguarding, environmental and personal safety concerns have been brought to our attention.

4.2.15 Following the rapid expansion local residents, faith and community groups and Croydon's refugee and new communities support groups have raised concerns with ward councillors alongside or on behalf of hotel residents.

4.2.16 Earlier this month the Leader and Cabinet Member for Children, Young People and Learning wrote to the Home Secretary requesting that government review the impact of the decision to commission five hotels housing asylum seekers in Croydon, and consider a more balanced distribution of any future commissions across the region. Neighbouring boroughs such as Bromley, Sutton and Merton have far fewer placed.

4.2.17 The letter also highlights that the current distribution is having a disproportionate impact on Croydon, particularly when taken alongside the equally disproportionate number of unaccompanied asylum seeking children and young people cared for by the council.

## 5. PRE-DECISION SCRUTINY

5.1 Scrutiny Children and Young People Scrutiny Committee reviewed and challenged the assumptions included in the financial modelling of the budget pressure for unaccompanied children and young people at the committee meeting on 18<sup>th</sup> January 2022.

## 6. CONSULTATION

6.1 Consultation and engagement has taken place with staff who provide support and care for unaccompanied children, including social work staff, independent reviewing officers, the fostering service and foster carers.

- 6.2 The Children Looked After service will work with EMPIRE and the children in care council to ensure children's wishes and feelings inform and influence the approach to any change should this be required.

## **7. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 7.1 Modelling of the net costs to Croydon of looking after Unaccompanied Asylum Seeking Children under 18 years of age and Care Leavers, aged 18 to 25 years old has been undertaken for the medium term of 2021-24. This modelling is based on the number of children and young people in Croydon's care and has been shared with and scrutinised by central government officials.
- 7.2 The cost of UASC above budget has not been factored into the MTFs for future years and will be an ongoing cost to the Council which will need to be met from service spend reductions either within the department or elsewhere in the Council.
- 7.3 Approved by: Richard Ennis, Interim Director of Finance, Investment & Risk and S151 Officer.

## **8. LEGAL CONSIDERATIONS**

- 8.1 An Unaccompanied Asylum Seeking Child (UASC) is a child who has applied for asylum in the United Kingdom and who, at the time of submitting the application for asylum, is under the age of 18, is not being cared for by an adult who has responsibility to do so, and is separated from both parents. This includes children who may have been relocated to the United Kingdom under a resettlement scheme (e.g. under section 67 of the Immigration Act 2016 ("the 2016 Act")), as well as those who arrive in the United Kingdom by other means. Unaccompanied asylum seeking children should ordinarily be granted temporary leave to remain for either a period of 30 months or until the child is 17 and a half years old, whichever is shorter, in any event in recognition that the child is unable to be returned to their home country until they reach adulthood.
- 8.2 On 1 July 2016 the Government implemented a National Transfer Scheme (NTS), underpinned by provisions in the Immigration Act 2016; with the aim of establishing a fairer and more equitable distribution of unaccompanied asylum seeking children across local authorities in the UK. At the same time as implementing the NTS the Government increased the National Funding Rates for new unaccompanied asylum seeking children and Care Leavers, which brought the National Rates into line with the 'Gateway Authority' rates. The scheme is designed to ensure an even distribution of unaccompanied asylum seeking children across LAs nationally. Under the NTS, where an

unaccompanied child first presents in a Local Authority which already has over 0.07% UASC to child population, the Local Authority is able to arrange for the transfer of the child. Despite earlier aspirations the NTS has not resulted in all local authorities sharing responsibility to help support and care for unaccompanied asylum seeking children. On 23 November the Minister for Safe and Legal Migration, Kevin Foster wrote to all local authorities with children's services across the UK to inform them of the government's intention to temporarily mandate the National Transfer Scheme.

- 8.3 Pursuant to the Children Act 1989 ("the 1989 Act") local authorities such as the Council are subject to various statutory duties to support children in need within their areas. This includes, inter alia, a duty under section 20(1) of the 1989 Act to accommodate children in need who appear to require accommodation as a result of:
- a. there being no person who has parental responsibility for them;
  - b. them being lost or having been abandoned; or
  - c. the person who has been caring for the child being prevented (for whatever reason) from providing him or her with suitable accommodation or care.
- 8.4 Section 20(3) of the 1989 Act further requires that local authorities must provide accommodation for any children in need who reach the age of 16 and whose welfare the local authority considers is likely to be seriously prejudiced if they are not provided with accommodation.
- 8.5 The immigration status of unaccompanied asylum seeking children means that local authorities such as the Council will ordinarily owe them a duty under section 20 of the 1989 Act, in addition to other children in need already resident in the local area, at least while their applications for asylum fall to be determined. The support provided will include, for example:
- a. accommodation, either in foster care (for under 16s) or shared accommodation (for 17 – 18 year olds);
  - b. allocation of social workers; and
  - c. assistance and admissions to local schools and colleges.
- 8.6 The legal duties of local authorities in respect of unaccompanied asylum seeking children also continue after they reach the age of 18. This means that whilst a number of children leave the children in care system each year, and therefore the Council receives less funding, they continue to be provided with services due to being formerly looked-after children.
- 8.7 If a decision is made to breach the Council's legal duties arising from the pressure being placed on the council's ability to discharge its statutory duties to all children and families in Croydon; to provide help and protection to children in need and safe effective services to all children in care and care leavers, then the role of the Monitoring Officer in such circumstances is set out in section 5 of the Local Government and Housing Act 1989. The Monitoring Officer is required under section 5(2) to prepare a report in

circumstances where an action, omission or decision leads to the Council operating outside its statutory duties.

- 8.8 In relation to any period of time that the Council operates outside its statutory duties, it will face legal risk, no matter how valid the reasons for its current circumstances. This is because the statutory duties are not optional and not transferable. Therefore, and there is no doubt that this period would need to be time limited.
- 8.9 In order for the Monitoring Officer to undertake a report to Council under S5, all legal opportunities should be exhausted before such report and any further legal diligence. Therefore, the Monitoring Officer will seek to ensure that the Council returns to lawfulness as quickly as possible and therefore any action will be time limited.
- 8.10 On 19 January 2022, the High Court handed down judgment in the case of *R (MA and HT) v Secretary of State for the Home Department* [2022] EHC 98 (Admin) in which it was ruled that Home Office guidance for social workers assessing the age of young people arriving in Kent is unlawful. Mr Justice Henshaw found that the decision not to implement a *Merton* compliant age assessment was unlawful. He also found that the detention of the two claimants at the Kent Intake Unit (KIU) was unlawful due to the flawed age assessments. On 14 January 2022, in advance of the hand-down of this judgment, the Home Secretary withdrew the KIU Social Worker Guidance. The Home Office is also applying for permission to appeal the decision.
- 8.11 Hundreds of unaccompanied young people arriving on UK shores have been detained by the government in a facility called the Kent Intake Unit (KIU) for the purposes of carrying out a “short” age assessment, since Kent County Council stopped taking them into care in September 2020. The Home Office recruited its own social workers to carry out these age assessments at the KIU if they were of the view that the individual claiming to be a child was potentially an adult. The assessments generally lasted no more than an hour, and there would not be an appropriate adult present to support the young person, as is policy during age assessments by children’s services. If judged to be over the age of 18, the asylum seeker was referred on to adult accommodation, usually hotels.
- 8.12 Mr Justice Henshaw found that the age-assessment process was “inherently unlawful in the sense that it lacks essential safeguards”, and that deciding to detain young people for an age assessment, and assessing them immediately upon arrival, was also unlawful.
- 8.13 The Home Office said its Guidance has been withdrawn because there was no longer a need for social workers at the KIU to undertake abbreviated age assessments following the Home Office’s decision in its overarching age assessment guidance on 14 January 2022 to change the threshold that its immigration officials can apply to age disputed cases. That change means that where there is doubt over whether a person is a child or an adult, in the absence of documentary evidence, Home Office staff can treat a claimant as

an adult, without further consideration of their age, if their physical appearance and demeanour very strongly suggest that they are ‘significantly over 18’ - and where two officers have reached this conclusion independently. However, Parliament’s joint committee on human rights (JCHR) warned in a recent report that the Home Office’s decision to lower the threshold for age assessments to 18 raises risks of wrongly identifying a child as an adult and unlawfully detaining a child in immigration detention. The committee warned this would mean they would not be entitled to support and accommodation under the Children Act and may potentially be placed into unsafe accommodation with inadequate safeguarding.

- 8.14 In its response to the ruling, the Home Office also pointed to its planned reforms to age assessments through the current Nationality and Borders Bill. This would “widen the evidence base for social workers to consider when making assessments and lead to better informed decisions”. This includes the introduction of ‘scientific’ measures to assess an asylum-seeking person’s age if it is in dispute, such as “examining or measuring parts of a person’s body” and “analysis of saliva, cell or other samples”. The JCHR said it was “not convinced there was any justification for the use of scientific methods” and that they “may not improve the accuracy of decision-making when compared to a holistic assessment undertaken by a social worker”. “A holistic assessment would avoid the use of any physical (and potentially invasive) procedures which may not be appropriate and may even cause trauma depending on the nature of the procedure and the experience of the individual concerned,” it added.
- 8.15 There has been much media coverage of the recent court ruling in the *MA* and *HT* case. It remains to be seen how the Home Office will fully respond to this court ruling and which further legal developments or guidance may arise as a result of this in due course.
- 8.16 Approved by Petrena Sharpe, Interim Head of Social Care & Education Law

## **9. HUMAN RESOURCES IMPACT**

- 9.1 There are no direct human resource implications arising from this report. Whilst the reports sets out the Council’s aim to reduce the number of unaccompanied children by 2023/24 which is likely to have an impact on the number of staff needed to deliver the service, it is a long term ambition that can be managed through natural attrition with no/minimal impact on permanent staff. Where relevant, the normal HR policies and procedures will be applied.
- 9.2 Approved by: Debbie Calliste, Head of HR for Children, Families and Education on behalf of the Director of Human Resources



## 10. EQUALITIES IMPACT

- 10.1 This report supports the Council's priority to tackle ingrained inequality and poverty and tackling the underlying causes, such as structural racism, environmental injustice and economic injustice. The report also builds on the work that the Council has historically undertaken to support individuals fleeing from persecution.
- 10.2 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Sec 149 Equality Act 2010. The Council must, in the performance of its functions, therefore have due regard to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.3 In order to comply with Section 149, it is the Council's duty to ensure that children who are seeking asylum are afforded the same services and care as children already living in the United Kingdom.
- 10.4 This report identifies that no data is kept on a number of characteristics. This means that we are unable to ascertain if the children seeking asylum will be impacted by change by virtue of the characteristic that they hold. It is likely that child asylum seekers will be unable to seek support privately and individually in the same manner that children in the UK are able to do. It is also likely that potential language barriers or potential lack of access to digital information and communication will further exasperate this issue.
- 10.5 It is recommended that an action plan be put in place to further increase the collection of data by equality characteristics. There is a legitimate purpose to collect this data in that the purpose of collecting is to ensure that no discrimination takes place.
- 10.6 An Equality Analysis has been undertaken to assess the impact on children with protected characteristics. Analysis of the cohort as at 10<sup>th</sup> January 2022 shows that 83% of the unaccompanied children in Croydon's care were male. All of the children are from black or minority ethnic backgrounds, with 18 nationalities represented. The significant representations are 32% from Afghanistan, 20% from Albania and 25% from Vietnam. Any change in provision will have a disproportionate impact on children with these protected characteristics although this report makes no recommendations for change.

10.7 Approved by Gavin Handford, Director of Policy, Strategy and Partnerships.

## **11. ENVIRONMENTAL IMPACT**

11.1 There is no environmental impact arising from this report.

## **12. CRIME AND DISORDER REDUCTION**

12.1 There is no crime and disorder impact arising from this report.

## **13. DATA PROTECTION IMPLICATIONS**

### **13.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

### **13.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

**NO**

13.3 The interim Corporate Director Children, Young People and Education comments that there are no data protection impacts arising from this report.

Approved by **Debbie Jones**, interim Corporate Director

-----  
**CONTACT OFFICER:** *Debbie Jones, interim Corporate Director Children, Young People and Education*

## **APPENDICES**

1. Summary of changes to the financial modelling to forecast the unfunded costs of unaccompanied children and young people – November 2020 – 10<sup>th</sup> January 2022

## **2. BACKGROUND DOCUMENTS – LOCAL GOVERNMENT ACT 1972**

1. Report to Cabinet, 16<sup>th</sup> August 2021

<https://democracy.croydon.gov.uk/documents/b9149/Addendum%20-%20Item%206%2016th-Aug-2021%2018.30%20Cabinet.pdf?T=9>

2. Home Office Guidance Living in Asylum Accommodation, 2019

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/821324/Pack A - English - Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821324/Pack_A_-_English_-_Web.pdf)