

MINUTES of the meeting of the **DERBYSHIRE COUNTY COUNCIL** held on 17 July 2019 at County Hall, Matlock

PRESENT

Councillor T Ainsworth (In the Chair)

Councillors D Allen, R Ashton, K S Athwal, J Atkin, N Atkin, Mrs E Atkins, S A Bambrick, N Barker, B Bingham, J Boulton, S Brittain, S Bull, Mrs S Burfoot, K Buttery, Mrs D W E Charles, Mrs L M Chilton, A Dale, Mrs C Dale, J E Dixon, Mrs H Elliott, R Flatley, M Ford, Mrs A Foster, J A Frudd, K Gillott, A Griffiths, Mrs L Grooby, Mrs C A Hart, G Hickton, R Iliffe, Mrs J M Innes, T A Kemp, T King, B Lewis, W Major, P Makin, S Marshall-Clarke, C R Moesby, P Murray, G Musson, R A Parkinson, Mrs J E Patten, J Perkins, Mrs I Ratcliffe, B Ridgway, C Short, P J Smith, S A Spencer, A Stevenson, S Swann, D H Taylor, Mrs J A Twigg, M Wall, G Wharmby, Mrs J Wharmby, Ms B Woods and B Wright.

43/19 **APOLOGIES FOR ABSENCE** Apologies for absence were submitted on behalf of Councillors Mrs S L Blank, J A Coyle, Mrs A Fox, D McGregor, R Mihaly and Ms A Western.

44/19 **DECLARATIONS OF INTEREST** Councillor I Ratcliffe declared a personal interest in Agenda item 9 (a) – Departmental Service Plans 2017-21 (2019-20 update) as a Trustee of Waltham House.

45/19 **CHAIRMAN'S ANNOUNCEMENTS** The following announcements were made:-

- (a) The Chairman invited all Members to stand and observe a minute's silence for Remembering Srebrenica, 7 to 14 July 2019.
- (b) The Historic County Day of Celebration was 23 July 2019 and Derbyshire's County Day was 22 September 2019, when the county flag would be flown.
- (c) Today was the 130th anniversary of the County Council. On behalf of the Council, the Chairman thanked Councillor Parkinson, the Civic Chairman of Derbyshire County Council for hosting the commemorative lunch.

(d) The Monitoring Officer would be emailing all Members with a reminder to ensure that Elected Member declarations of interest were up to date, especially for those who had different responsibilities following the local elections.

46/19 **MINUTES OF THE COUNCIL MEETING** On the motion of Councillor B Lewis, duly seconded,

RESOLVED that the minutes of the meeting of the Council held on 15 May 2019 be confirmed as a correct record.

47/19 **REPORT OF THE LEADER** Councillor B Lewis, Leader of the Council, informed the Council that there was nothing to report.

48/19 **COUNCILLOR QUESTIONS**

(a) Question from Councillor K Buttery to Councillor B Lewis, Cabinet Member for Strategic Leadership, Culture and Tourism

Does the Leader of the Council agree that every single elected member within this Chamber has a duty to speak out against discrimination, including anyone who is tolerant of discrimination?

Councillor Lewis responded to the question as follows:

It is an important point and it is absolutely the case that all elected members have a duty to do so.

I am not going to single out individual members today, I hope there is sufficient self-awareness that they may know who they are, but I will say this: politics in recent years has taken some very interesting twists and turns and extremes of views, Left or Right. We have seen some reinterpretations of the notions of 'free speech'. It is fundamentally important that whenever elected members, whether they sit over *here* or over *there* see or hear expressions or statements that are clearly dog whistles or that on the face of it might sound benign but excuse discrimination or dismiss it out of hand, that they challenge those particular views.

Let me make the point that no party is immune. I am not going to claim that ours is without its problems. Every barrel has its bad apples. What we can't let them do is spoil the whole barrel. We want to provide training over here at County that will help us all tackle discrimination, including homophobia, and enable us to spot the signs so that we are able to respond and have the confidence to respond accordingly.

I think it is important that that particular piece of training has real world context to enable us to see those issues faced by Jewish and Islamic communities in this country and within the respective political parties. I would therefore suggest that the nature of that training needs to include speakers from affected communities within the two main political parties so that we can see for ourselves why these issues must be tackled.

Councillors absolutely must have that confidence to challenge discrimination and I am sure every member in this room, Councillor BATTERY, will attend such a session. I think we need to nip this in the bud. Let's show we mean it when we say we are against all forms of discrimination.

Councillor BATTERY asked the following supplementary question:

I have to say I do welcome the additional training. I think it is important as elected members that we recognise and have the confidence to actually challenge discrimination in whatever format. Can you just let me know what the next step is moving forward and the timescale?

Councillor LEWIS responded to the supplementary question as follows:

What we anticipate is I will have a conversation with Councillor MUSSON who leads on training within the organisation. We will put together some form of training and hopefully by the end of this autumn have something in place that all members can sign up for then and we will make sure we have the appropriate trainers in place to do that as well.

49/19 PUBLIC QUESTIONS

(1) Question from Vanessa Prueitt to Councillor A Dale, Cabinet Member for Young People

An EHCP should take 20 weeks, I personally know of many families experiencing delays and currently receiving 5 hours or less in education per week (mine included); this is having a huge effect on children's mental health and their education due to delays. What actions will you take to speed up response times according to code of practice in which your department should be following?

Councillor DALE responded as follows:

In relation to the timeliness of EHCPs you are right in that the statutory timescale within which this should be completed is 20 weeks.

We monitor the timeliness of EHCPs rigorously and we know that we are not meeting the 20 week deadline in all cases. As a result a number of actions have been taken to try to address this issue as we know it is not good enough for our families and we are committed to improving it. Some of the actions we have taken include:

- Improving our data reporting so that it shows more clearly the progress of the completion of plans and if there is any danger of them going out of timescales at the different points in the process. This enables managers to take action and monitor more effectively.
- We have changed the way we operate the decision to assess Panels so that the decisions can be taken in a more timely way. Also additional Panels have been put in place to ensure we can take decisions within the six weeks allocated for that part of the process.
- We are changing the way that the consultation happens with the agreed schools or settings so that this part of the process is done in a more timely way to prevent any delay.
- In terms of checking and moderation of the assessment, this is now done in localities rather than centrally which we have found to be more effective.
- We have also employed additional staff in the locality teams to try and add capacity to assist with the amount of workload that that service is currently managing.

In relation to educational provision, ordinarily children should have a school place while the education, health and care needs' assessment is being undertaken and therefore access to full-time education (unless they have been permanently excluded). However, we do know that sometimes for some children, even with additional support, it can be difficult for them to attend their placement.

Therefore, while the needs' assessment is completed and the EHCP agreed, children who are out of school due to their medical needs or social, emotional or mental health needs are supported through blended programmes of education.

These programmes are tailored to meet individual needs and comprise of direct teaching and also e-learning support. The proportion of each element of the blended programme varies according to the needs and the circumstances of each young person. This can include for example:

- Direct teaching from an out of school tuition tutor
- Real-time, direct teaching on-line that constitutes a full-time programme
- Access to our virtual learning environment which enables children from across the whole statutory school age range to broaden their learning
- As well as other activities such as Forest Schools

Where the circumstances require, a child may be offered a full-time, direct teaching offer out of the home. These are only ever intended on a temporary basis and reintegration back into school is always our objective. Support is provided throughout the child's 'journey' back into school, in order to build resilience and support the child's emotional health and well-being.

Whilst I am unable to comment in this forum on any individual situation I hope that that information is helpful for you. Thank you for your question.

The following supplementary question was asked:

Do think it is acceptable for special needs' children to be out of education for twelve months or more? I know of 15 or more families who are actually going through this process so where you are saying there is actual help and support effectively there isn't.

Councillor Dale responded to the supplementary question as follows:

Absolutely not, I don't think it is acceptable and as I have explained in answer to the question we do work extremely hard to try and offer provision for those children who are not able to access their placement. We work extremely hard with children who are permanently excluded to get them an alternative placement. Clearly more needs to be done and I have outlined some steps there where we need to speed up the process of issuing the EHCPs to ensure that placements are there for children. I agree with you there is a lot of work being done, and I am sure there is always more work to be done, but I do take on board what you are saying.

(2) Question from Sharon Davis to Councillor A Dale, Cabinet Member for Young People

From April 2018 to the present day July 2019 and as a result of the National funding formula over-estimation of the number of children and young people with EHCPs attending Derbyshire schools, how much have some individual schools received in overspend (in multiples of £6k)?

Councillor Dale responded as follows:

The National Funding Formula does not allocate on the basis of the number of pupils with Educational Health Care Plans. It does, though, allocate significant Low Prior Attainment funding to schools with pupils not achieving a 'good level of development' in primary schools, or those who do not achieve the expected level at Key Stage 2 in one or more of reading or writing or mathematics in secondary school. That includes children with Special Educational Needs and Disabilities.

The Local Authority's formula for 2019-20 - which mirrors very closely the National Funding Formula - allocated £15.2m to primary and £12.06m to secondary schools as Low Prior Attainment funding, so schools with a higher number of children not achieving the expected standard, including those with additional educational needs, do receive a higher Low Prior Attainment budget allocation.

Low Prior Attainment funding is based on individual child data reported by schools which is then aggregated by the DfE. Therefore, the allocations reflect the number of children who have not achieved a good level of development within each school.

As the funding is not issued on the basis of an estimation of children with EHCPs, and nor is it issued in multiples of £6,000, I am afraid it is not possible to answer your question in any more detail than I have provided.

The following supplementary question was asked.

Several schools in Derbyshire with more than the usual number of SEND children have not been given enough SEND funding to pay the basic cost. They need help from Derbyshire County Council to survive. What advice would you give to such a school? Should they try not to accept any more SEND children or should they take the money from the budget intended from other children?

Councillor Dale responded to the supplementary question as follows:

As you know we will be discussing the motion put forward by Councillor Smith later today. You will know it is something we as an administration feel strongly about. We are lobbying our own Government on the issue of school funding. We hopefully have a couple of candidates for the leadership who are taking that issue more seriously, so I think we have the opportunity for some progress soon on that issue. We will continue to campaign on that issue.

In terms of advice for schools, I would hope in the forthcoming budgets we may have some better news for them.

(3) Question from Frank Gorman to Councillor A Dale, Cabinet Member for Young People

Is the County Council, as Trustee of the Chesterfield Schools Foundation, happy that the 0.36% return currently being generated by the Charity's investments is the best available?

Councillor Dale responded as follows:

The question may only require a 'yes' or 'no' answer but in true politician fashion I am afraid I am going to give you a bit more than that.

As part of the Office for Civil Society and the Charity Commission's Revitalising Trust Initiative, Derbyshire County Council has undertaken a review of its portfolio of educational Trusts, many of which have become ineffective over time due to the very small amounts of money that they hold, or because their charitable objectives are too restrictive or no longer relevant.

We are working closely with Foundation Derbyshire (our local Community Foundation) to identify the most appropriate ways to update those Trusts so that they can be better administered for the benefit of local schools and educational learning projects.

The Chesterfield Schools' Foundation is included in the review and part of that process will be to identify more effective and efficient returns on investment, which in turn will provide more money for grant making. We will be able to share the detail of those proposals publicly once we have completed our consultation with the affected beneficiary schools. Thank you.

The following supplementary question was asked.

Is this policy going to alter as a result of a major windfall that the Charity receives from the sale of her stamps in the region of up to

£400,000 which will make it the largest charity in Chesterfield?

Councillor Dale responded to the supplementary question as follows:

I am happy to provide a written response following the meeting on that point, Mr Gorman, if that is okay.

(4) Question from Rob Tresidder to Councillor T King, Cabinet Member for Economic Development and Regeneration

In the light of the Council's refusal to declare a climate emergency at its last meeting in May and in the context of the motion that was passed, could the Council please say what progress has been made with the objectives outlined in that motion and in the carbon reduction manifesto published the week before. Please could this question be answered bearing in mind the absence of any proposals on mitigating climate change on today's agenda, the absence of any new material on the council's website and the measly two column inches on page three of the Council's own magazine, Derbyshire Now.

After speaking to Mr Tressider he was happy with a written response. He would then send his second question in which would also be responded to in a written manner. He was happy with that.

50/19 **PETITIONS** There were none received.

51/19 **DEPARTMENTAL SERVICE PLANS (2017-21 (2019-20 UPDATE)** Service Plans set out how each department would contribute to the outcomes and priorities set out in the Council Plan refresh 2019-21. The Council Plan outcomes, which outlined what the Council was working towards with partners and local people were as follows:

- **Resilient and thriving communities** which shared responsibility for improving their areas and supporting each other
- **Happy, safe and healthy people**, with solid networks of support, who felt in control of their personal circumstances and aspirations
- **A strong, diverse and adaptable economy** which made the most of Derbyshire's rich assets and provided meaningful opportunities for local people
- **Great places to live, work and visit** with outstanding schools, diverse cultural opportunities, transport connections that kept things moving and a healthy environment for all
- **High quality public services** that worked together and alongside communities to deliver services that met people's needs

The five priorities outlined in the Council Plan, which provided a focus for effort and resource, were:

- Value for money
- A prosperous Derbyshire
- Empowered and self-sufficient communities
- A focus on prevention and early intervention
- High performing council services
- The Service Plans described how departments would work towards achieving the outcomes and priorities set out above. Performance measures were included in the Service Plans, however in some cases baseline and target information was still to be confirmed due to the need for data that was not fully available until later in the year.
- Divisional plans had also been developed by each department, and these enabled more detailed planning for the delivery of departmental service plans and business as usual activities within divisions. The divisional plans were held within departments.

On the motion of Councillor B Lewis, duly seconded,

RESOLVED to approve the departmental Service Plans 2017-21.

52/19 **DERBYSHIRE PENSION BOARD** In April 2015, Council approved the establishment of the Derbyshire Pension Board, as required by the Local Government Pension Scheme (Amendment) Regulations 2015.

Council further agreed, in September 2017, to staggered terms of office for Board members, and to extending Board members' tenure to four years in order to support continuity.

Further to Council's approval in May 2019 to appoint a new Employer Representative, O Fishburn, the membership of the Board was as follows:

| Role | Name | Start Date | Term | Expiry |
|--------------|-------------|-------------------|-------------|---------------|
| Member Rep | N Read | June 2018 | 4 years | June 2022 |
| Member Rep | K Gurney | June 2015 | 4 years | June 2019 |
| Employer Rep | O Fishburn | May 2019 | 4 years | May 2023 |
| Employer Rep | N Calvert | Sept 2018 | 4 years | Sept 2022 |

As K Gurney's period of tenure expired in June 2019, the established process was undertaken to recruit to the vacancy, and a panel comprising the Chair of the Board and officers of the Council had

selected and recommended the following candidate for appointment to the Derbyshire Pension Board:

| Role | Name | Start Date | Term | Expiry |
|------------|----------|------------|---------|-----------|
| Member Rep | K Gurney | July 2019 | 4 years | July 2023 |

Karen Gurney had been a committed and productive member of the Pension Board since it was established in 2015 and had contributed significantly towards its development. The panel was, therefore, very pleased to receive an application from her for a further period of service, and had no hesitation in recommending her reappointment.

On the motion of Councillor B Lewis, duly seconded,

RESOLVED to approve the appointment of K Gurney to the Member Representative vacancy on the Board for a fixed term of 4 years.

53/19 CONSTITUTION UPDATE FROM THE GOVERNANCE, ETHICS AND STANDARDS COMMITTEE

At its meeting on 4 July 2019, the Governance, Ethics and Standards Committee received a report from the Monitoring Officer following an initial review of the constitution. This had resulted in the Governance, Ethics and Standards Committee recommending the following changes to the Constitution:

a) Article 20 – Officers (page 71)

An amendment to the Table which appeared at paragraph 20.1 (c) which should read:

| Post | Designation |
|---|----------------------|
| Executive Director for Commissioning, Communities and Policy (<i>note the underlined extract was the proposed additional wording</i>) | Head of Paid Service |

b) Amendments to the Scheme of Delegation for the Director of Communities Services in relation to Trading Standards Activities: (pages 104 – 107)

It was proposed that the following legislation was added to the current Scheme of Delegation:

- Animals Act 1971;

- Energy Act 2011;
- Environmental Protection Act 1990;
- Offensive Weapons Act 2019;
- European Union (Withdrawal) Act 2018;
- Health and Safety at Work etc. 1974 ss19-26; and
- Tenant Fees Act 2019.

The following extract was amended to read:

- (a) any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972 or the European Union (Withdrawal) Act 2018 ; *(note the underlined extract was the proposed additional wording)*

That the following legislation was removed from the Scheme of Delegation:

- Medicines Act 1968

- c) Amendments to Article 8 (pages 21 and 22)

The list at paragraph 8.1 was amended to reflect the correct composition of the Improvement and Scrutiny – People Committee and read as follows:

People – comprising 9 Members, 2 Church representatives (1 from the Church of England diocese and 1 from the Roman Catholic diocese with voting rights in respect of education matters only and otherwise non-voting), 2 Parent Governor representatives (with voting rights in respect of education matters only and otherwise non-voting) and 2 trade union representatives (non-voting)

It had become apparent that the scrutiny arrangements as described in the current Constitution were particularly outdated. Therefore, in the interim, pending the review, it was proposed to replace the table in Article 8 paragraph 8.2 with the table attached at Appendix 1 which better reflected the remit of each of the Improvement and Scrutiny Committee.

- d) Public Questions at meetings of the Improvement and Scrutiny Committees

Over recent months there had been a growing interest by members of the public and interest groups and organisations to ask questions at the respective Improvement and Scrutiny Committee meetings.

The Health Scrutiny Committee developed a protocol to accommodate this and as good practice, this had now been extended to all of the Council's Improvement and Scrutiny Committee meetings.

At its meeting on 6 June 2019, meeting the Resources Improvement and Scrutiny Committee suggested some helpful amendments and points of clarification and the Governance, Ethics and Standards Committee was asked to consider these and to approve the inclusion within the Council's Constitution to aid transparency.

The Guidance on Public Questions was based very closely on the Council Procedure Rules for Public Question at Full Council Meetings.

A copy of the amended and now proposed Guidance appeared at Appendix 2 to this Report and it was proposed that this Guidance would be incorporated into the Appendices section of the Constitution.

Receipt of Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities issued by MHCLG

On 7 May 2019, MHCLG issued the long awaited Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities. A copy of this Guidance appeared at Appendix 3 of this report.

During the course of the last municipal year, the Governance, Ethics and Standards Committee (formerly known as the Standards Committee) took a decision to delay the review of the Council's delivery of Improvement and Scrutiny in so far as the Council's Constitution was concerned until this current year following receipt of central government guidance.

As this Guidance had now been received, approval of the Governance, Ethics and Standards Committee had been sought in order for the formal review of the Council's scrutiny arrangements to commence. A detailed report would be presented to Full Council for consideration during the course of this municipal year.

It was proposed that this review was completed within this municipal year.

On the motion of Councillor B Lewis, duly seconded,

RESOLVED to (1) approve the proposed amendments to the Council's Constitution as recommended by the Governance, Ethics and Standards Committee on 4 July 2019; and (2) note the receipt of the

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities.

54/19 **TO RECEIVE AND DEBATE MOTIONS** Council
considered a Notice of Motion as set out below:-

Motion submitted by Councillor P Smith

As a result of ongoing Government cuts in Derbyshire there are schools in Derbyshire which have had a cash loss in the budget of more than £200,000 over two years. Some schools have lost up to a quarter of their staff. Some schools have had their SEND budget halved.

The National Funding Formula allocating financial resources to schools includes a requirement that schools themselves have to fund the first £6,000 of the support for the most disadvantaged Special Educational Needs pupils (SEND), those with Education Health and Care plans (EHCP). The formula guesses the number of SEND children at a school based upon the size of the school and the deprivation in that area. It does not take into account the number of SEND children at a school.

This results in schools who develop a good reputation for supporting disadvantaged students facing an unsuitable financial burden when more SEND pupils attend than the National Funding Formula predicts.

It also results in children with additional needs finding it difficult to get a school place. In particular this is a problem when children change schools for example entering reception or beginning secondary school.

Derbyshire County Council resolves to ensure every Derbyshire SEND pupil gets the education they are entitled to get by:

- Urgently looking at setting up a discretionary fund so that those schools which are penalised by the National Funding Formula because they have more SEND Children than predicted can be given more financial support; and
- To continue to pressure the government for more funding to be invested in education, especially SEND; and
- To bring a report outlining the proposals for funding the discretionary fund and progress made with the government to the next Full Council meeting.

The motion was duly seconded.

An amendment to the motion was moved by Councillor A Dale, duly seconded, that the motion be amended to read:-

Derbyshire County Council recognises that schools are facing significant financial challenges as a result of rising cost pressures and funding which, although increasing in recent years, has not adequately kept pace in real terms. A variety of factors can have a significant effect on a school's financial situation, including the age and condition of its buildings, staffing levels and the complexity of the needs of its pupil population.

Council is also aware that some inclusive schools, who have developed a good reputation for supporting disadvantaged students and those with special educational needs and disabilities, feel that they have become a victim of their own success, in that their demands are increasing but the funding has not adequately reflected this.

Council recognises the National Funding Formula as a positive step forward but believes that Government must go further in making it fairer and more transparent, by removing the historic inequalities in the system and increasing the basic entitlement for schools to ensure the core running costs are met. Council also believes that significant additional investment in both the schools block and high needs block is required urgently by the Government.

In addition, Derbyshire County Council resolves to ensure every Derbyshire SEND pupil gets the education they are entitled to get by:

- Urgently reviewing the Discretionary Contingency Fund, in consultation with the Schools Forum, so that those schools which feel penalised because they have more SEND children can be given more financial support; and
- To continue to pressure the Government for more funding to be invested in education, especially SEND; and
- To bring a report outlining progress on reviewing the Discretionary Contingency Fund and with the Government to a future Full Council meeting within the next six months.

The amendment to the motion was duly seconded, voted upon and declared to be WON.

At the request of at least five Members, a recorded vote was taken and recorded as follows:

For the motion (49) Councillors T Ainsworth, D Allen, R Ashton, K S Athwal, J Atkin, N Atkin, S A Bambrick, N Barker, B Bingham, J Boulton, S Bull, Mrs S Burfoot, K Buttery, Mrs D W E Charles, A Dale, Mrs H Elliott, R Flatley, M Ford, Mrs A Foster, J A Frudd, K Gillott, Mrs L Grooby, Mrs C A Hart, G Hickton, R Iliffe, Mrs J M Innes, T A Kemp, T King, B Lewis, W Major, S Marshall-Clarke, C R Moesby, P Murray, G Musson, R A Parkinson, Mrs J E Patten, Mrs I Ratcliffe, B Ridgway, C Short, P J Smith, S A Spencer, A Stevenson, S Swann, D H Taylor, M Wall, G Wharmby, Mrs J Wharmby, Ms B Woods and B Wright.

Against the motion (0).

Abstained (0).