

NOTICES OF MOTION

Report of the County Solicitor

Recommendation: that consideration be given to any recommendations to be made to the County Council in respect of the Notices of Motion set out hereunder having regard to the relevant factual briefing/background papers and any other representations made to the Cabinet.

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The Notices of Motion submitted to the County Council by the Councillors shown below have been referred to the Cabinet in accordance with Standing Order 8(2) - for consideration, reference to another committee or to make a recommendation back to the Council.

A factual 'Briefing Note/Position Statement' prepared by the relevant Head of Service is also included where appropriate or available, to facilitate the Cabinet's discussion of each Notice of Motion.

### **(a) Outsourcing and Devon County Council Contracts (Councillor Atkinson)**

*This Council is concerned that outsourcing Devon County Council (DCC) contracts can reduce financial flexibility and the ability to respond to changes in policies and facilitate effective cross department working across interrelated DCC services in complex areas like the health and wellbeing of children. Accordingly, DCC can no longer afford to be locked into long term, difficult if not impossible to vary contractual schemes for services like Children and Mental Health if it wishes to remain responsive to the needs of Children from birth to age 25.*

*In view of cross party concern to fully and effectively integrate cross department working in children's health and mental health services and education Devon County Council should bring back key services in-house and manage them in the wider public interest including value for money (defined broadly to include effects on public revenues and community wellbeing at large) and social value tests.*

### **Briefing Note/Position Statement from the Chief Officer for Children's Services**

The responsibilities for the provision of wellbeing services for children including mental health services are shared between the Clinical Commissioning Group's (CCG's) and the LA. With the CCG's having the greater share of the national policy obligations for mental health services.

The CCG's lead responsibility for mental health support has been restated in the Five Year Forward View and the Future in Mind guidance published in March 2015<sup>1</sup> which has allocated additional resource to CCG to transform Local CAMHS Services captured in the LTP guidance<sup>2</sup>. For Devon this has been worked up as a joint strategy<sup>3</sup> to cover the footprint of Devon, Torbay and Plymouth which is the strategic planning geographical boundary of the CCG's locally (Sustainability and Transformation Plan, STP, Footprint).

In relation to pooled budgets and contracting frameworks, the total budget for the provision of CAMHS Services in Devon for 2017/18 was just over £10 millions this is split between the two CCG's, NHSE and the LA's contribution was £800,000 which is just over 7% of the total.

The current service has been delivered through a five-year contract for Integrated Children's Services (ICS) and the provider is Virgin Care. This service is currently out to tender with the new contract being in place from April 2019.

Both the ICS contract and the new Community Health and Care Contract will be let on NHS terms and conditions these are nationally prescribed and have provision within them to ensure the providers undertake Service Development Improvement Plans (SDIP) and there is a monetary value attached to these improvements (CQUIN, Commissioning for Quality and Innovation).

On Performance, the local service has been compromised over the last year with the provider reporting increased demand and difficulty in recruiting suitably qualified staff. Something experienced in many professions in the South West.

The CCG, as the lead commissioner, have addressed these concerns with robust contract management and a joint improvement plan.

Consideration given to the separate commissioning of mental health services by the LA was undertaken in preparation for the re-tender of Community Health and Care services. The Impact Assessment set out the rationale for retaining the LA resources in a pooled fund arrangement. The main benefits being that the LA resource is very small also that the delivery of services has been from a completely pooled and therefore integrated arrangement. To falsely split this at this point could further impact on delivery of services for children. The specification and contractual requirements from 2019 set out expectations for joint working across education, health and care and at a strategic level expectation's in the leadership of the organisations to achieve this.

The financial consideration is the continued investment in a Section 75 with the CCG for the provision of Mental Health Services for Children.

A detailed impact assessment was undertaken at the pre-procurement stage of this project and the outcomes reflected in the construction of the tender, contract documentation and in the evaluation of the tenders and as such meets our equality duties. The CCG also undertook an impact assessment. The Impact Assessment can be found as an additional document on the cabinet minutes dated 11<sup>th</sup> October 2017 link below<sup>4</sup>.

There is a risk of ongoing issues in the performance of the service. This is mitigated by the CCG having in place a robust contract management approach and the LA being able to oversee their investment through the legal framework of a Section 75.

<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414024/Childrens\\_Mental\\_Health.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414024/Childrens_Mental_Health.pdf)

<sup>2</sup><https://www.england.nhs.uk/wp-content/uploads/2015/07/local-transformation-plans-cyp-mh-guidance.pdf>

<sup>3</sup><https://www.newdevonccg.nhs.uk/mental-health/child-and-adolescent-mental-health-services-camhs-transformation-plan-201516-202021-101884>

<sup>4</sup><https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=133&MId=2129&Ver=4>

**(b) Badger Culling and County Council Property (Councillor Atkinson)**

*The Council will not permit badger culling to take place on property owned by the County Council and calls for the badger cull to be ended throughout Devon; due to the scientific consensus that it is ineffective and is therefore cruel and unnecessary.*

*The Council calls on DEFRA to begin a nationwide vaccination programme of badgers, which initial studies show to be highly effective in preventing the spread of bTB.*

*With the TB vaccine becoming available again, the Council calls on the government to instead invest in the development of cattle vaccine, more effective TB tests and introduce other measures to improve farm biosecurity as a vital part of effectively controlling bTB such as effective cattle movement controls*

*The Council calls on all governments, present and future, to not authorise badger culls for the purpose of controlling the spread of bTB, unless there is overwhelming scientific evidence showing the potential cull to be effective and necessary.*

**Briefing Note/Position Statement from the Head of Digital Transformation and Business Support**

The Government's position in relation to Bovine TB is one which supports a licenced cull and whilst there are differing views on control methods (vaccinations are not currently a government approved method of control), following the culling trials over many years the Government have sanctioned culling under strict and rigorous licencing rules. These are managed on a local level by the farming industry and they are also subject to stringent cattle movement controls to prevent the spread of bovine TB from cattle to cattle.

Cabinet's position in relation to culling on property owned by the County Council has not changed since the Motion raised in January 2014 (and debated at Cabinet in February 2014); the County Council, as landlord of the County Farm Estate could not legally prevent any tenant from signing up to a lawful/licenced cull. (Any attempt by the Council to prevent a cull on its land in such circumstances would represent a breach of the tenancy agreement).

**(c) Dorset & East Devon National Park (Councillor Shaw)**

*This Council supports the establishment of a Dorset and East Devon National Park and resolves to submit a case for this to the DEFRA review of national parks.*

**Briefing Note/Position Statement from the Head of Planning, Transportation and Environment**

A review of National Parks and Areas of Outstanding Natural Beauty (AONBs) was announced by the Secretary of State for Environment in May this year. This process will be led by an independent panel and chaired by the writer and journalist, Julian Glover. This formed one of the key commitments set out in the government's 25 Year Environment Plan.

The purpose of the review is to look at how these iconic landscapes meet our needs in the 21st Century, including whether there is scope for the current network of 34 AONBs and 10 National Parks to expand. Weakening or undermining their existing protection or geographical extent will not be part of the review, which will, instead, focus on how

such designated areas can boost wildlife, support the recovery of natural habitats and connect more people with nature.

A Dorset National Park Group has been established as a Community Interest Company to promote the designation of a new National Park which might cover the Dorset and East Devon AONBs and what remains of Thomas Hardy's Egdon Heath. The case for the creation of the National Park is based around the potential environmental, economic and social benefits that this could offer, beyond those of the existing AONBs. A National Park brings together in one organisation responsibilities for conserving and enhancing the environment and heritage; promoting enjoyment, recreation and well-being; and fostering the economic and social wellbeing of its communities.

There has been contact with Devon County Council on this issue over several years. Whilst no formal position has yet been established by this Authority, the initial feedback provided to the Group has been cautious. Whilst the designation of a new National Park may, indeed, offer some of the potential advantages identified by the Dorset National Park Group, there a range of other factors which will need to be weighed in the balance, including:

- The value and identity of the existing designations covering this part of East Devon, most notably its status as an AONB and, along the coastal strip, as a World Heritage Site.
- The discrepancy that would be established between the newly designated National Park and the directly adjoining Blackdown Hills AONB, which covers a broadly similar landscape and shares many of the same special qualities.
- The additional cases that are also being promoted for the recognition of other areas of Devon as nationally protected landscapes, such as the case for AONB status which is being developed for the Exe Valley, or the previously proposed designation of the South Devon AONB as a National Park. There are also long-standing and well justified calls for boundary changes within Devon's AONBs (and, possibly, its National Parks), such as the potential extension of the North Devon AONB to include Braunton Marsh.
- The political and practical implications of the inclusion of much of East Devon within a new planning authority with a strong Dorset focus, linked to their intended Unitary structure.

#### **(d) Road Repairs and Skansa Contract (Councillor Hook)**

*The quality of road repairs since Skanska took on the contract has reached a new low. Certainly, that is the case in Newton Abbot. Consequently, officers will make early recommendations to Cabinet for immediate improvements in the quality of workmanship. These recommendations to include more frequent quality control inspections and the imposition of financial penalties for inadequate work, demonstrated by the need to return to any given pothole or equivalent piece of work within a 6 month period.*

#### **Briefing Note/Position Statement from the Chief Officer for Highways, Infrastructure Development and Waste**

Devon County Council entered into a contract with Skanska Construction UK limited for the provision of a highways maintenance contract commencing on 1 April 2017.

Cabinet had previously considered a report in May 2015 regarding the future delivery models, and contained within this report was the reference from the spotlight review carried out by the then Place Scrutiny Committee, where

*“there was a strong level of support by members for a clear DCC “presence” on the ground. The retention of an effective intelligent client in the new delivery model could meet this objective.”*

As a consequence the decision on what is repaired and the method is retained by Devon County Council, and the contractor instructed accordingly. The provision of services delivered by the contract, includes but are not limited to winter service; reactive safety and emergency response; cyclic functions e.g. grass and gully cleaning; bridge and structures work; patching and resurfacing. There are a suite of other contracts supporting highway maintenance employing other contractors. In the financial year 18/19 Skanska is delivering approximately 40% of the highway maintenance activity in Devon.

The conditions during the winter of 17/18 resulted in a proliferation of potholes appearing on the network, not just in Devon but nationally. Within the specification for the contract the repair works should only proceed in the following circumstances

- a. the temperature of the surface to be covered is 0°C or more
- b. the air temperature is at or above -1°C and rising
- c. and the surface to be covered is dry, unfrozen and free from ice, snow, salt and grit.

Unfortunately there are times when for safety reasons repair work has to be undertaken in one or more of the above circumstances, and it would be unreasonable to expect a repair carried out under these conditions to last.

The Corporate Infrastructure and Regulatory Services Committee has set up a Task Group looking at the Planned and Reactive Maintenance; Potholes and drainage work carried out by Skanska and Devon County Council staff.

The scope of this review includes

- To investigate Devon Highways’ (DCC and Skanska) performance over the past year in terms of planned and reactive maintenance, and how this should be managed going forward
- To examine the robustness of DCC’s contract management of Skanska and review and define relevant KPIs
- To make recommendations as appropriate to the Corporate Infrastructure & Regulatory Services Scrutiny Committee on how Devon Highways’ (DCC and Skanska) performance could be improved to deliver a better service for Devon residents.

The scope of the review would appear to cover the issues raised in the Notice of Motion.

**(e) Community Hospital Buildings (Councillor Wright)**

*This Council notes the millions of pounds that local communities have invested into their community hospitals over many years, across Devon.*

*This Council appreciates how much local people care about their hospitals, about retaining beds in those hospitals that still have them and about retaining health services in those that have lost their beds.*

*This Council acknowledges that the strong feeling that is present in many communities in Devon about the retention of community hospital buildings where beds have been closed.*

*This Council strongly supports the retention of all Devon community hospital buildings for the provision of health and social care services and will strongly oppose any plans to declare any community hospital building surplus to requirements.*

**Briefing Note/Position Statement from the Head of Adult Commissioning and Health**

The quality and condition of the existing community hospital buildings across Devon is variable and the NHS individually assesses suitability for future use on a regular basis. Population health and care needs change over time to meet the developing needs of the population, and the rising expectations of how care is delivered and received.

The NHS looks at its hospitals stock to ensure that it is relevant in meeting the changing needs and expectations people have of health and care services and support.

Where the NHS determines that a building is no longer fit for purpose or population need no longer warrants the facility, it will follow a formal NHS disposal process.

Similarly if a building could be used in a new and better way this will also be explored as was the case with the Budleigh Salterton Community Hospital.

**(f) Universal Credit (Councillor Atkinson)**

*Universal Credit is due to be rolled out in Devon in September. The National Audit Office has concluded in its recent report that Universal Credit has not delivered value for money and it is uncertain if it ever will.*

*The NAO has “significant doubts” about the DWP’s expected savings. Universal Credit currently costs £699 per claim, which is four times as much as the DWP intends for it to cost when the systems are fully developed, the report said.*

*Local and national bodies, as well as claimants, showed the NAO evidence of people suffering hardship during the rollout of the full UC service. The report said: “These have resulted from a combination of issues with the design of Universal Credit and its implementation. The department has found it difficult to identify and track those who it deems vulnerable. It has not measured how many Universal Credit claimants are having difficulties because it does not have systematic means of gathering intelligence from delivery partners.”*

*Its survey of full service claimants, published in June 2018, the department found that four in ten claimants that were surveyed were experiencing financial difficulties.”*

*The report said that while it recognises the “determination and single-mindedness” with which the DWP has “driven the programme forward to date, through many problems” local and national organisations have raised issues and the department does not accept that UC causes hardship among claimants “because it makes advances*

*available and believes that if claimants take up these opportunities hardship should not occur”.*

*There are serious problems with the system's design and implementation. People need better support to make claims and should not be left without enough money to live on. It is unhelpful that the government reduces 40% from people's benefits to pay back a loan given to them to survive the month long gap before they receive their first payment."*

*The Council is urged to write to the DWP to ask what its plans are for making sure that the claimants in Devon do not suffer hardship in the changeover and to ensure that claimants can get the advice and support from the DWP and independent agencies.*

### **Briefing Note/Position Statement from the Chief Executive**

Universal Credit will bring six different means tested benefits and tax credits for working age people into a single monthly payment. The eventual caseload in Devon is estimated at 61,570 households by 2022 .

The Government's aim is that Universal Credit will:

- encourage more people into work through better financial incentives, simpler processes and increasing requirements on claimants to search for jobs;
- reduce fraud and error; and
- be cheaper to administer than the benefits it replaces

The main features of Universal Credit are:

- Claims will be made on line and managed thereafter using a digital journal.
- Claimants will receive a monthly payment into a single nominated account for the household. They will be able to manage this amount themselves, including payment of rent to their landlord.
- There is a positive incentive to work as for every pound earned over a basic amount (the “work allowance”), the benefit will be reduced by £0.63. Under the old system many people on a low income faced a "cliff edge", losing all their benefits at once as soon as they started working more than 16 hours.

Under Universal Credit there is a formal waiting period of one week, with the benefit then being paid monthly in arrears – the intention being that this more closely mirrors what it is like to be in a job. However benefit advances are available to claimants on request if required to cover the period until they receive their first payment.

Universal Credit will affect claimants differently depending on their circumstances. In terms of direct financial support, there will be “winners” and “losers”. Those relatively likely to gain include low-earning households in rented accommodation and one-earner couples with children. Working lone parents, those with assets or unearned income, and two-earner couples are more likely to lose.

Universal Credit will bring positive changes including stronger work incentives, increased employment support and an easier transition into work. Working families will get up to 85% of child care costs paid. As the system is easier to understand, more people may take up their entitlement.

However the 2018 National Audit Office Report “Rolling out Universal Credit” found evidence that Universal Credit is not working for all claimants, particularly the vulnerable, with issues experienced by claimants including:

- hardship because of not having savings to last the initial wait for payments;
- problems with monthly budgeting; and
- difficulties making and managing a claim online, because of a lack of digital access and skills.

The Department of Work and Pensions (DWP) has put several forms of support in place, including:

- A free Help Line
- Funding for Local Authorities to provide Assisted Digital Support;
- Personal Budgeting Support;
- Alternative payment arrangements e.g rent paid direct to landlord.
- Split Payment in exceptional circumstances e.g. payment divided between two members of a household to prevent domestic/financial abuse.
- Tailoring of claimant commitments and work search requirements is agreed dependent on health and individual circumstances enabling claimants to prioritise and address barriers that prevent them moving into work,
- Visiting Officers for vulnerable claimants,
- Support for introduction of fee-free basic bank accounts for people who were previously unable to open a bank account.

The County Council works with the DWP and other partners to support claimants in several ways, including:

- Commissioning Libraries Unlimited who provide free wi-fi, public IT facilities and advice in libraries,
- A core £440k grant to Citizens Advice, covering benefits and other advice,
- Membership of the DWP Vulnerable Customer Network which develops joint approaches to support the most vulnerable claimants,
- Partnership working between DWP Work Coaches and DCC Family Intervention teams,
- A series of joint DWP/DCC presentations to help front line workers support families in the transition to Universal Credit,
- Briefings for specialist staff such as those dealing with substance misuse,
- Introduction of an easy claims procedure for free school meals, which now need to be claimed directly.

District Councils provide advice and also a limited amount of financial support for the most vulnerable claimants through Discretionary Housing Payments.

### **(g) Environmental Protection (Councillor Wright)**

*This Council shares the Government's desire to leave our environment in a better state than it is now.*

*But its proposals are unlikely to achieve that ambition. They will leave the environment with weaker protection than it currently has under our EU membership - a long way off the 'world-leading watchdog' it promised.*

*To deliver the protection the environment needs, this council calls on the government to ensure that the proposed new law, must at least:*

- *Deliver world-leading environmental governance, including the watchdog promised, with powers that are at least as strong than any other environmental watchdog in the world, which any citizen can complain to for free.*
- *Deliver a watchdog which will investigate all breaches of environmental law by any part of government, including reviewing and challenging significant, strategic or nationally important planning and infrastructure decisions, robustly enforce the law including through fines and legal action, and ensure public bodies act to ensure damage is restored.*
- *Put environmental principles into law, not just policy. These principles should include at a minimum, those environmental principles found in the EU treaties (for example, that principle that polluters should pay to rectify damage they cause), but the bill should allow for the addition of new principles where appropriate.*
- *Set legal targets for nature's recovery, against which this and future governments will be held to account, to ensure long-term action that will leave the environment in a better state.*
- *Work with other countries, in a transparent way, to co-develop and co-design environmental governance arrangements and secure our existing environmental principles.*

*This Council recognises the huge importance of the Devon environment – both for local residents and visitors who will support the local economy, as well as the wildlife, and urges government to listen to environmental organisations such as the RSPB and significantly strengthen proposals to meet its own strong ambitions for nature's recovery.*

**Briefing Note/Position Statement from the Head of Planning, Transportation and Environment**

This Notice of Motion relates to two recent developments in national environmental policy and legislation.

The first is the publication of the 25 Year Environment Plan, which sets out the Government's ambition and proposals to enhance our natural environment. This articulates the new policy and approach to managing the environment and identifies long-term goals and targets. However, it does not directly prescribe any statutory new requirements on central or local government. Despite this, the aspirations of the 25 Year Environmental Plan are widely supported, and this Authority is already addressing objectives set out in this plan through its own environmental performance agenda (e.g. the DCC Pollinators Action Plan and its new Plastics Strategy).

The second is the new requirement stemming from Section 16 of the European Union (Withdrawal) Act 2018 for the Secretary of State to publish draft legislation to establish a set of environmental principles, an associated statement of policy relating to these and a new public authority to enforce proportionate compliance. These Brexit-related issues were the subject of a recent Defra consultation, to which a DCC officer response was sent, which:

- offered views on the potential scope of the new suite of environmental principles;
- supported the establishment of a strong, independent and appropriately resourced new public body to oversee and enforce environmental compliance;

- made suggestions on the nature and extent of new enforcement responsibilities and how these might relate to pre-existing approaches, which will remain in force after Brexit.

This Report has no specific equality, environmental, legal or public health implications that will not be assessed and appropriate safeguards and/or actions taken or included within the detailed policies or practices or requirements in relation to the matters referred to herein.

JAN SHADBOLT

[Electoral Divisions: All]

**Local Government Act 1972: List of Background Papers**

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| <b><u>Background Paper</u></b> | <b><u>Date</u></b> | <b><u>File Reference</u></b> |
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Nil