By:	Ben Watts, General Counsel (Monitoring Officer)
To:	All Elected Members
Subject:	Report
Date:	County Council – 23rd July 2021
Classification:	Unrestricted

Summary: This report is made under section 5 of the Local Government and Housing Act relating to a breach of statutory duties by Kent County Council.

Introduction

1. On 10th June 2021, I formally advised Members that I had been notified by the statutory Director for Children Services (DCS) of an imminent breach of the Council's legal duties arising from the significant pressure being placed on KCC by the arrivals of unaccompanied asylum seeking children.

2. The role of the Monitoring Officer in such circumstances is set out in section 5 of the Local Government and Housing Act 1989. I am 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. For completeness, I have determined that the current and continuing situation requires me to write a report which will then be considered by Members on 23rd July 2021.

3. Ultimately, the legislation is in place to ensure that all Members of the Council are sighted on such serious issues. However, the legislation does not entirely contemplate a set of circumstances such as this.

4. The Leader and Cabinet Member for Children's Services wrote separately to provide further details for Members in relation to the situation and the actions that were and are being taken politically and operationally on 10th June 2021 and this email is attached at Appendix 1 to this report.

5. The statutory DCS provided advice to the Leader and Cabinet Member for Children's Services by way of an email dated 10th June 2021 which is attached to this report at Appendix 2.

6. Any questions that Members may have politically or operationally are not for response by me and remain for the Leader and Cabinet Member supported and advised by the statutory Director of Children's Services and his deputies.

Breach of Statutory Duty

7. Kent County Council has a range of statutory duties in relation to vulnerable children. The majority of these are arranged within the Children Act 1989 and include dozens of separate duties that the Council is required to discharge

regarding vulnerable children. It is important to note that these duties are all mandatory and the responsibilities under the legislation is non-delegable.

8. Section 20 of the Children Act is a key duty to provide accommodation for children in need within the Kent County Council administrative area. This means that where children are lost, abandoned or have no appropriate carer/person with parental responsibility that the Council must step in.

9. The DCS has advised me that he no longer felt able to safely discharge the section 20 duty to receive children into our care at the port of Dover. Since 10th June 2021, the Council has continued to explore our legal options regarding steps that could be taken to support the urgent resumption of services.

10. In the circumstances, I regretfully accept that Kent County Council was unable to meet our statutory duty to accommodate these young people. At that moment, the DCS concluded that the competing interests of two sets of statutory duties meant that the Council would inevitably fall outside at least one of them.

11. In applying my mind to the breach of statutory duty, I am satisfied that the relevant Members and Officers were and remain committed to complying with the obligations under section 20 of the Children's Act at the earliest opportunity and further details in relation to the latest position can be provided by way of verbal update at the County Council meeting.

Ben Watts
General Counsel
Tel No: Irrelevant & Sensitive
e-mail: benjamin.watts@kent.gov.uk

Background Information: none