

Cabinet

Agenda

Date: Tuesday, 8th September, 2009
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Where a member of the public wishes to ask a question of a Cabinet Member three clear working days notice must be given to the Democratic Services Manager, and the question must be submitted in writing.

4. **Minutes of Previous meeting** (Pages 1 - 8)

To approve the minutes of the meeting held on 11 August 2009.

Please contact Cherry Foreman on 01270 529736
E-Mail: cherry.foreman@cheshireeast.gov.uk with any apologies or requests for further information or to give notice of a question to be asked by a member of the public

5. **Key Decision 2009/10-07 Single Funding Formula for Early Years Provision**
(Pages 9 - 16)

To approve the draft single funding formula for consultation with stakeholders in the Autumn of 2009.

6. **Key Decision 2009/10-10 Car Parking Control and Charging in the Former Borough of Congleton: Consideration of Outcome of Statutory Consultation Period** (Pages 17 - 26)

To consider the objections made to the proposed off street parking places order.

7. **Reserves Strategy Update** (Pages 27 - 50)

To agree the reserves strategy for 2009-2012.

8. **Joint Waste PFI Scheme** (Pages 51 - 58)

To consider the steps to be taken to ensure the proposed joint waste PFI scheme receives the necessary legal certification to satisfy external financial sources.

9. **To Consider the Recommendations of the Children and Families Scrutiny Committee upon a Local Government Ombudsman Complaint against the former Cheshire County Council** (Pages 59 - 98)

The report of the Ombudsman is attached with the minutes of the Children and Families Scrutiny Committee meeting on 3 August 2009; the report considered by the Children and Families Scrutiny Committee is contained in Part 2 of the agenda.

N.B: The Borough Solicitor and the Borough Treasurer have the power to make the payment recommended by the Ombudsman if approved by Cabinet.

10. **Exclusion of the Press and Public**

The report relating to the remaining item on the agenda has been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

11. **To Consider the Recommendations of the Children and Families Scrutiny Committee upon a Local Government Ombudsman Complaint against the Former Cheshire County Council** (Pages 99 - 102)

Report considered by the Children and Families Scrutiny Committee on 3 August 2009.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Cabinet**
held on Tuesday, 11th August, 2009 at The Capesthorne Room - Town Hall,
Macclesfield SK10 1DX

PRESENT

Councillor W Fitzgerald (Chairman)
Councillor B Silvester (Vice-Chairman)

Councillors R Domleo, D Brickhill, D Brown, P Findlow, A Knowles, J Macrae
and P Mason

Councillors in attendance:

C Andrew, A Arnold, Rhoda Bailey, O Hunter, R Menlove, A Moran,
A Richardson, L Smetham, A Thwaite, C Tomlinson and J Wray.

Officers in attendance:

Chief Executive, Borough Treasurer and Head of Assets, Borough Solicitor,
Head of HR and Organisational Development, Strategic Director People and
Strategic Director Places

70 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Keegan.

71 DECLARATIONS OF INTEREST

None.

72 PUBLIC SPEAKING TIME/OPEN SESSION

There were no questions from members of the public.

73 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 14 July 2009 be approved as a
correct record.

74 PERFORMANCE REPORT

Consideration was given to this report giving an overview of performance
for Cheshire East. The report included details of outturn measures for
2008/09 reconfigured to Cheshire East from County Council and District
Councils' performance, the aim of which was to highlight issues inherited
from predecessor authorities and also to identify strengths to build on. In

addition a summary was attached of the Place Survey carried out to support the national indicators and to provide benchmark information.

RESOLVED

For the reasons set out in the report: -

1. That the overview of performance detailed in Appendix 1 to the report be noted.
2. That the findings of the Place Survey and the proposal to carry out further analysis be noted.

75 REVIEW OF TRANSITIONAL COSTS AT OUTTURN

Consideration was given to this report on the outcome of the 2008/09 outturn position for transitional costs, excluding severance. This was the fourth full review of the programme since the budget had been approved by the Cabinet in June 2008.

The report included details of the final 2008/09 outturn position for transitional costs and sources of funding for Cheshire East, and information on a number of changes since the three quarter year review. Also included was information in respect of changing patterns of expenditure, and the comparison of costs spent on behalf of Cheshire East based upon agreed sharing principles with the actual costs incurred by the individual Councils in 2008/09. In addition it identified the requirement to adjust for this difference in costs as part of the disaggregation of the Cheshire County Council balance sheet.

RESOLVED

For the reasons set out in the report: -

That the final 2008/09 position on transitional costs at outturn be noted.

76 FINANCIAL UPDATE – QUARTER 1 (EMERGING PRESSURES)

Consideration was given to this report on emerging financial pressures in the first quarter of the 2009-10 financial year. It focussed, in particular, on areas of high financial risk to the Council and included updates on Treasury Management, the Capital Programme, in-year collection rates for Council Tax and Business Rates and an update on the Reserves strategy.

RESOLVED

For the reasons set out in the report: -

1. That the emerging pressures on the Council's revenue budget in the first quarter of 2009-10, detailed in Section 11 of the report, and the proposed remedial action, be noted.

2. That the Treasury Management update, detailed in Section 12 of the report, be noted.
3. That the Council's in-year collection rates for Council Tax and Business Rates, detailed in Section 13 of the report, be noted.
4. That progress to date on delivering the 2009-10 capital programme, detailed in Section 14 of the report, be noted.
5. That schemes on the capital project deferred list, shown in Appendix 7 to the report, be noted.
6. That the update on the joint Waste PFI scheme, shown in Appendix 2 to the report, be noted.
7. That the delegated decisions approved by Directors, shown in Appendix 4 to the report, be noted.
8. That the updated Reserves position, detailed in Section 15 and Appendix 8 to the report, be noted.
9. That approval be given to the revised in-year capital budget for 2009-10 as set out in Section 14 of the report, including;
 - Supplementary Capital Estimates (SCE)/Virements over £100,000 and up to and including £500,000, shown in Appendix 3 to the report;
 - Supplementary Capital Estimates (SCE)/Virements over £500,000 and up to and including £1.0m, shown in Appendix 3 to the report;
 - Reductions in approved budgets, shown in Appendix 5 to the report;
 - Changes in funding sources, shown in Appendix 6 to the report.
10. That Council be requested to approve the following supplementary estimates exceeding £1m:
 - A Supplementary Capital Estimate of £1,150,000 for the Modernisation Grant 09/10 detailed in Appendix 3 to the report;
 - A Supplementary Capital Estimate of £2,227,195 for the Devolved Formula Capital Grant in Advance detailed in Appendix 3 to the report.
11. That Council be requested to give approval to Cheshire East Borough Council entering into a partnership with Cheshire West & Chester Borough Council and Warrington Council to deliver a sub regional Future Jobs fund programme, and to approve the Supplementary Revenue Estimate of £1.440m, detailed in Section 11, paragraphs 11.2.25 – 11.2.27 of the report.

77 THINK FAMILY

During discussion of this item Councillor A Thwaite declared a personal interest by virtue of being a Director of Connexions.

Consideration was given to this report identifying the dimensions of the Think Family agenda, and recommending how it might be taken forward by Cheshire East Council and by the whole system in Cheshire East.

RESOLVED

For the reasons set out in the report: -

1. That approval be given for the Think Family Strategy to be developed by Cheshire East Council.
2. That approval be given for the Strategic Director (People) to take the lead in developing the Think Family Strategy in collaboration with colleagues across the whole Authority.
3. That the work be shared with partners in the Local Strategic Partnership and the Local Area Partnerships.

78 TREASURY MANAGEMENT ANNUAL REPORT 2008-09

The Treasury Management Policy requires an annual report on the performance of the Council's treasury management operation. Cabinet considered this report containing details of the activities in 2008-09 for Cheshire County Council, Macclesfield Borough Council, Crewe and Nantwich Borough Council and Congleton Borough Council.

RESOLVED

For the reasons set out in the report: -

1. That the Treasury Management Annual Report for 2008-09, detailed in Appendix A to the report, be received.
2. That the amendments to the current credit criteria and Counterparty List, detailed in Section 12 of the report, be approved.

79 KEY DECISION 09/10-24 JOINT WASTE TREATMENT PFI PROJECT - ACQUISITION OF SITE FOR WASTE TRANSFER STATION FACILITIES

Consideration was given to this report providing details of work carried out to identify and acquire a site for Waste Transfer Facilities in the Macclesfield area as part of the Waste Treatment PFI procurement. The facility would provide for the bulking-up of residual household waste for transport to the Waste Treatment Facility. Details of alternative sites and their merits were provided and a site at Hulley Road, Macclesfield was recommended for acquisition.

It was reported that Cheshire West and Chester Council was currently the lead Authority with regard to Joint Waste Contracts and was therefore leading on the acquisition of a site in consultation with Cheshire East Council. Cheshire West and Chester Council's Executive Member for Environment had approved the acquisition, and under the terms of the relevant Inter Authority Agreement, the views and support of Cheshire East Council were now sought.

In response to questions from Members it was confirmed that any potential impacts would be assessed and taken into account in the planning and permission process. Members then passed the resolution at minute 80, resolved minute 81 and reconvened in Part 1.

RESOLVED

Following separate consideration of the Part 2 item at minute 81 and for the reasons set out in the report: -

1. That the purchase of a site at Hulley Road be approved in order to enable a Waste Transfer Station in Macclesfield to be included within the scope of the Waste Treatment PFI Contract.
2. That alternative site options continue to be explored with a view to ensuring that a Waste Transfer Station at Hulley Road provides best value.

80 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED

That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

81 KEY DECISION 09/10-24 JOINT WASTE TREATMENT PFI PROJECT - ACQUISITION OF SITE FOR WASTE TRANSFER STATION FACILITIES

In association with Minute 79 above Members considered Appendix A to the report in respect of the acquisition of a site for waste transfer station facilities in Macclesfield.

RESOLVED

For the reasons set out in the report and as now discussed: -

That Appendix A be noted.

82 KEY DECISION 09/10-16 FOOTBALL FACILITIES AND EXTRA CARE HOUSING PROVISION IN SANDBACH – PROJECT INTERDEPENDENCIES

During discussion of this item Councillor Rhoda Bailey declared a personal interest by virtue of being known to two of the objectors.

Consideration was given to this report on the partnership working that had taken place to secure leisure provision and extra care housing for older people on land in Sandbach.

RESOLVED

For the reasons set out in the report: -

1. That Council be recommended to approve a Supplementary Capital Estimate of £2.2m to acquire land, build and establish a suitable football facility in Sandbach fully funded via a variety of sources, including a grant from the Football Foundation, a contribution from the external football Club and either capital receipt on the sale of existing land owned or internal transfer of funds from Adults service within Cheshire East.
2. To authorise in principle, and subject to the relevant planning consents being obtained, the submission of the land at Newhall Avenue, Sandbach described in para 12.1 of the report, as one of the sites offered by Cheshire East for inclusion in the Round 5 Extra Care Housing Programme.
3. That, if the site is not able to be included in the Round 5 Extra Care Housing Programme as anticipated in (2) above to authorise the sale of the land at Newhall Avenue, Sandbach described in para 12.1 of the report.
4. That authorisation be given to purchase a site at Hindheath Road, Sandbach for the provision of football facilities.
5. That, as far as may be necessary, authorisation be given for the internal transfer of the Newhall Avenue site from The Health & Wellbeing Service to the Adult Service, within Cheshire East Council, accompanied by the appropriate transfer of capital funds from the Adult Service to the Health & Wellbeing Service.

83 DISPOSAL OF PREMISES KNOWN AS 63/65 WHEELOCK STREET, MIDDLEWICH

Consideration was given to this report in respect of the sale of these premises.

RESOLVED

For the reasons set out in the report: -

That approval be given to the sale of the freehold interest in 63/65 Wheelock Street, Middlewich on terms and conditions to be determined by the Borough Treasurer and Head of Assets and the Borough Solicitor.

84 APPEAL AGAINST DECISION NOT TO AWARD HARDSHIP RELIEF

In accordance with the Discretionary Rate Relief Policy agreed by Cabinet at its meeting on 2 December 2008 consideration was given to an appeal against a decision not to award hardship relief. Members raised a number of questions in respect of this case and, as the necessary background information was held by the Finance Department, agreed that the matter be delegated to the Borough Treasurer and Head of Assets and the Portfolio Holder Resources.

RESOLVED

For the reasons now stated: -

That the final decision in this matter be delegated to the Borough Treasurer and Head of Assets and the Portfolio Holder Resources.

85 MANAGING WORKFORCE CHANGE

Consideration was given to a request for voluntary early retirement.

RESOLVED

For the reasons set out in the report: -

That the request be approved.

86 COUNTY HALL

At the last meeting of the Cabinet consideration was given to a report on the future use of County Hall and a further report was now considered on the options available. Following the circulation of the agenda the decision requested had been revised and this was now approved.

RESOLVED

For the reasons set out in the report.

1. That negotiations for the potential sale of County Hall to Chester University should proceed subject to the inclusion of an overage provision.

2. That the possible transfer of the Council's interest in Castle Square Car Park be dealt with as a separate transaction and that an independent valuation of the car park be obtained jointly with Cheshire West and Chester Borough Council, taking into account relevant planning constraints and restrictive covenants.
3. That Cabinet delegate to the Borough Treasurer and Head of Assets and the Borough Solicitor the further negotiations for both transactions in consultation with the Leader of the Council.

The meeting commenced at 2.00 pm and concluded at 3.45 pm

W Fitzgerald (Chairman)

CHESHIRE EAST COUNCIL

REPORT TO: Cabinet

Date of Meeting:	8 September 2009
Report of:	John Weeks, Strategic Director, People
Subject/Title:	Draft Single Funding Formula for Early Years Provision
Portfolio Holder	Councillor Paul Findlow

1.0 Report Summary

- 1.1 This report sets out proposals for the delivery of the single funding formula for funding the free early years provision for 3 and 4 year olds to be implemented in Cheshire East from 1st April 2010.

2.0 Decision Requested

- 2.1 That Cabinet approve the draft single funding formula to go out to consultation with stakeholders in the autumn 2009.

3.0 Reasons for Recommendations

- 3.1 This recommendation will ensure that the local authority carries out a full impact assessment and implements a single funding formula for early years providers that has considered all views, in line with Department for Children, Schools and Families (DCSF) guidance.

4.0 Wards Affected

- 4.1 Early years providers across all wards will be affected.

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Climate change - Health

- 6.1 None

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 The single funding formula will be funded initially through a combination of the Dedicated Schools Grant (DSG) and a ring-fenced Standards Fund revenue grant. The Standards Fund revenue grant is provided by the DCSF to fund the extension to the free entitlement from 12.5 hours to 15 hours to the most disadvantaged areas from September 2009 and to all providers from September 2010. An indicative allocation of £1.8m Standards Fund is available to Cheshire East for 2010/2011 and a proportion of this grant will be used to fund the single funding formula. The modelling of the single funding formula has been based on a total notional pot (DSG plus Standards Fund) of £10,207,000. Because settings will initially be funded on estimated hours of provision, but will have their budgets adjusted to reflect actual provision, the total notional pot includes a contingency of £510,000 (5%).
- 8.2 A number of funding models have been considered and some of these are attached at Appendix 1. Based on the projected costs of the proposed draft funding model (Model 1), the 2010/11 budget would not at this stage be used in full. This allows some flexibility to accommodate changes, for example, in the degree of flexibility offered by providers and/or the number of providers meeting the quality standards. Model 3 illustrates the costs if all providers were to meet one of the quality factors. In addition, it is expected that a number of private, voluntary and independent (PVI) and maintained providers will require some transition support during 2010/11 and these costs will be met from within the unallocated budget.
- 8.3 There are currently 26 maintained and 178 PVI early years providers. A financial impact assessment of the draft formula has been carried out for all 204 early years settings and the table below sets out the impact on their budget should this formula be implemented. This has shown that the majority of those projected to have a significant budget reduction are maintained nursery units (MNUs) that are operating significantly under capacity. The 6 maintained settings most affected have been visited and transition plans will be put in place for 2010/11, in line with the local authority's childcare sufficiency duties. In the longer term, some early years providers where there is an oversupply of childcare may not be sustained.

Estimated gain/loss under proposed new formula	Number of providers compared to		
	2009/10 rate of £3.50	2008/09 rate of £3.36	Sector cost analysis* ¹
- £6001 and above	9	7	7
- £3001-£6000	17	5	2
- £1001-£3000	35	20	1
+ or - £1000	78	59	6
+ £1001-£3000	32	44	28
+ £3001-£6000	16	29	58
+ £6001 and above	16	39	101

*¹ The sector cost analysis report was published in June 2008, based on data from 2006/07 and 2007/08 that identified the cost for different providers of delivering early years education.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 The single funding formula is intended to fund, across the maintained and PVI sectors, the free entitlement to early years provision for 3 and 4 year olds which is the authority's statutory duty under Section 7 of the Childcare Act 2006. It will also assist with the authority's delivery of its duty to secure sufficient childcare under Section 6 of the Childcare Act 2006 by supporting the requirement to deliver the free entitlement flexibly and to address inconsistencies in how the offer is currently funded. The authority will commission PVI and maintained sector early years providers to deliver the extended flexible entitlement under the terms of contracts which will be approved by the Borough Solicitor.

10.0 Risk Management

- 10.1 The application of the single funding formula could overspend its allocated budget should participation increase beyond that forecast. Control measures have been put in place to reduce this risk by setting aside a contingency budget equating to approximately 5% of the total indicative allocation. In addition, the value of the proposed formula funding factors will be kept under review to reflect the most up to date data and any change to the total available funding pot, before the first budgets are set using the new formula.
- 10.2 Administering the single funding formula could place a significant additional burden on certain staff and IT systems within the authority's Children and Families Service. There is currently a shared service project team whose remit it is to ensure that there will be two new IT systems in place to hand over to Cheshire East Council and Cheshire West and Chester Council when the shared service ends at the end of September 2009. The systems are being developed to meet the new requirements of the single funding formula. Currently the administration also sits within the shared service and a Project Board is working to establish two separate administration teams for East and West with a handover period. A proportion of the available Standards Fund revenue grant has been earmarked to support the administration of the new funding formula.
- 10.3 There are no guarantees of any Standards Fund to support the new single funding formula beyond 2010/11. It is probable that the grant will come to an end and the funding be subsumed into DSG. The broader DSG distribution formula is currently under review by the DCSF and significant changes are likely from 2011/12. In the light of this uncertainty a cautious approach has been taken to the overall size of the funding pot.

11.0 Background and Options

- 11.1 In June 2007 the government announced that all local authorities will be required to design and implement a single local formula for funding the free

early years provision for 3 and 4 year olds in the maintained and PVI sectors from April 2010.

- 11.2 This new single local formula is intended to support the extension of the free entitlement for 3 and 4 year olds from 12.5 to 15 hours per week to be delivered flexibly, by introducing a consistent method of distribution of funding across all sectors based on common principles and a more transparent approach. Maintained Nurseries currently receive funding based on 7/12 places and 5/12 occupancy, whereas PVI providers are funded based on occupancy alone. The new formula aims to ensure that funding is more reflective of participation and supports a level playing field between different maintained and PVI providers, principally by ensuring providers are funded according to participation rather than places. While funding levels and funding methodologies do not have to be exactly the same for all providers, the local authority must be clear that any differences are justifiable.
- 11.3 An Early Years Reference Group (EYRG), a sub-group of the Schools Forum and made up of representatives from all early years provider sectors, has been meeting quarterly since December 2007 to work up recommendations for the development of the formula, in line with guidance from the DCSF. The DCSF set out the following core principles to which local authorities must have regard when considering the operation of the formula:
- The same factors should be taken into account when deciding the level of funding for each sector;
 - Decisions must be transparent and any differences between the sectors should be justifiable and demonstrable;
 - The level of funding should be broadly cost-reflective;
 - The formula must be based on common cost information from both the PVI and maintained sectors;
 - Settings should be funded on the basis of participation, not places;
 - The formula must take into account the sustainability of all settings;
 - Transition from the current funding mechanism to the future funding mechanism must be planned and managed carefully, and based on a clear impact assessment.
- 11.4 With reference to the principles set out above, the EYRG recommend the following factors to be part of the formula:

One base rate to be applied to all sectors – an early years sector cost analysis exercise suggests a variance of approximately +/- 5% from a median value across settings from all sectors and sizes.

Flexibility - the view was taken that all settings should be aiming to enable parents to exercise flexibility within the school day (minimum 9.00-3.00).

Deprivation - local authorities are required to take positive measures to address the outcomes gaps between their most disadvantaged children and the rest of the child population. New DCSF regulations will require the authority to include a deprivation factor in its early years formula.

Quality - the government is committed to every setting employing an 'Early Years Practitioner' (EYP). In addition the EPPE (Effective Practice of Pre-school Education) project suggests that the presence of a Qualified Teacher leading the practice (as opposed to an owner/manager who happens to be a qualified teacher) further improves outcomes for children.

- 11.5 The proposed application of these factors in designing a formula are set out in the table below:

Factor	Application	Additions £ per hour
Base rate	To be applied to all children	3.20
Flexibility	No flexibility	0.00
	Flexibility within school day (6 hours+)	0.15
	Extended day (10 hours +)	0.20
	If providing over 50 weeks	0.05
Deprivation	Based on % of children attending setting from deprived area, eg, 20% of children attending from a deprived area would result in addition of £0.1 to base rate (20 x 0.005)	0.005
Quality	If Early Years Professional (EYP) Status	0.15
	If Qualified Teacher Status (QTS)	0.25

- 11.6 Nationally, nursery schools have been shown to have the highest cost base. As schools they are subject to legal requirements not shared by other early years providers, including the requirement to have a headteacher paid on the national pay scale. DCSF guidance indicates that local authorities must remain aware of the presumption against the closure of these schools. Westminster Nursery School in Crewe is the only nursery school in Cheshire East and currently receives a delegated budget incorporating lump sum and other funding elements similar to that received by a primary school. Officers will undertake detailed work with Westminster Nursery School to ensure it can be sustained with a formula that is cost reflective, for example, by providing an appropriate level of lump sum funding.
- 11.7 Early years providers have been fully involved in the development of the single funding formula through the EYRG. The Schools Forum has been informally consulted and endorsed the draft strategy. The next step is to proceed with a further fully transparent consultation period that gives all stakeholders an opportunity to comment on the draft formula. It is proposed that this consultation takes place in the autumn term with a view to considering responses and finalising the formula in January/February 2010 for implementation on 1 April 2010.

12.0 Overview of Year One and Term One Issues

- 12.1 The Children and Families Scrutiny Committee considered the draft single funding formula at its meeting on 3 August 2009 and resolved that the Cabinet be advised that:

- (a) the draft formula comprising a base rate plus additional allowances for the

factors of flexibility, deprivation and quality be supported but consideration be given to introducing an additional allowance for provision that is suitable for children where English was not their first language;

- (b) the Committee is concerned about the inequity whereby maintained nurseries are unable to offer more than 15 hours childcare per child per week as this may put them at a disadvantage; and
- (c) a report be submitted to the Scrutiny Committee with the outcome of the consultation on the proposals.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Judith Thompson

Designation: Principal Manager Integrated Services

Tel No: 01244 973304

Email: Judith.thompson@cheshireeast.gov.uk

Budget Impact of Formula Funding Models for Early Years**Model 1**

Budget allocated based on previous 3 terms of take up applying the base rate plus additions as currently offered by settings

Provisional Pot excluding 5% contingency	£9,697,000
Budget allocated	£9,504,194
Unallocated	£192,806 (2.0%)

Analysis of £9,504,194 allocation

Base rate	£3.20	£8,566,027	90.1%
Flexibility	in hours	£ 324,824	3.4%
	In weeks	£ 47,459	0.5%
Quality	QTS	£ 367,450	3.9%
	EYPS	£ 7,399	0.1%
Deprivation		£ 191,035	2.0%

Model 2

Budget allocated as Model 1 but doubling the deprivation factor from £0.005 to £0.01 per hour per eligible child.

Provisional Pot	£9,697,000
Budget allocated with £0.01 deprivation factor	£9,695,228
Unallocated	£1,772 (0.01%)

Model 3

Budget allocated assuming all providers have reached level of quality by employing an early years professional or qualified teacher

Provisional Pot	£9,697,000
All providers have an EYPS or QTS	£9,677,857
Unallocated	£19,143 (0.2%)

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CHESHIRE EAST COUNCIL

CABINET

Date of meeting:	8 September 2009
Report of:	Strategic Director Places
Title:	Proposed Off Street Parking Places Order (to introduce Car Parking Control and Charging in the area of the former Borough of Congleton: Consideration of outcome of statutory consultation period.
Portfolio Holder	Councillor David Brickhill

1.0 Purpose of Report

- 1.1 The report summarises the grounds cited for objections to the proposal to introduce control and charging on council-operated public off street car parks within the area of the former Borough of Congleton.
- 1.2 Members will recall that the proposal was considered at the Cabinet Meeting of 14th July. Cabinet approved the proposal to make the Car Park Order, subject to the results of statutory consultations, for the following reasons:
 1. In order to ensure a uniform approach to car park management and control throughout Cheshire East, the Cabinet has approved the introduction of car parking control and charging on public car parks within the former Congleton Borough (subject to consultation). This is to be in advance of securing civil enforcement powers under the Traffic Management Act 2004 for both on and off street parking, which is expected to receive Department for Transport (DfT) approval before the end of this year.
 2. The improved control of parking which should result from charging would benefit the economies of the town centres, in that the principle is to remove long stay parking from very central locations, freeing up spaces for shorter stay customers and visitors. This also discourages non- essential car use in general.
 3. The proposal would bring parking control in the proposed area into line with the Council's Parking Strategy as approved by Cabinet on 21/4/09.

Off street parking in Congleton area is currently uncontrolled and free of charge at point of use. Car park operational and maintenance costs are therefore borne by the Council Tax payer as a whole rather than the users of the facilities.

2.0 Decision Required

2.1 Members are asked to consider the objections made to the proposed off street parking places order, and in the light of those objections resolve **either**:

2.1.1 To approve the order on the basis of the proposals as set out within the notice of proposals and subject to the Borough Solicitor taking action to remove any legal impediments regarding the affected land holdings, to authorise the Borough Solicitor to make the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2009 as advertised; **or**

2.1.2 To approve, subject to further consultation, a modification to the order as it relates to Fairview Car Park, Alsager so as to remove provision for a free first thirty minutes' parking; and in the event of there being no objections to the proposed modification and subject to the Borough Solicitor taking action to remove any legal impediments regarding the affected landholdings, to authorise the Borough Solicitor to make the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2009 duly modified in relation to the Fairview Car Park, Alsager as set out above ; **or**

2.1.3 To approve, subject to further consultation, any further modifications to the order that Cabinet consider necessary to take account of the responses from the consultation process, and in the event of there being no objections to the proposed modification and subject to the Borough Solicitor taking action to remove any legal impediments regarding the affected landholdings, to authorise the Borough Solicitor to make the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2009 duly modified as set out above.

3.0 Financial Implications for Transition Costs

3.1 N/A

4.0 Financial Implications 2009/10 and beyond

4.1 If the proposal is adopted, gross income of approximately £500,000 per annum should accrue to the authority. This year that sum is reduced to £250,000 should the proposal be adopted at the earliest opportunity which is now October 1st 2009.

4.2 Whilst the proposed income from off street car parks includes an element of surplus, which may be used in support of Council Services, this only derives from parking charges themselves. Any surplus arising from fine income must be separately considered and may only be used for parking or transportation improvements.

5.0 Legal Implications

- 5.1 The legal advice contained within the Part II Report to Cabinet of 16th June 2009 in respect of certain car parks remains relevant and these legal impediments will need to be resolved before any Order is made. The car park at Scotch Common remains subject to further advice. Before the Order is made, it will be necessary to ensure that the car parks to be the subject of the Order have been appropriated to car parking purposes.
- 5.2 As Cabinet's decision may include an amendment to the order as a result of objections received, legal officers' advice is as follows:
- 5.3 The Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996 provide that before a local authority makes an off-street parking places order it must consider all valid objections received during the consultation period which have not been withdrawn. The Regulations further provide that an authority may modify an order before it is made, but where such modification makes a 'substantial change' in the order the authority shall take such steps as appear appropriate for;
- (a) informing persons likely to be affected by the modifications;
 - (b) giving those persons an opportunity of making representations;
 - (c) ensuring that any such representations are duly considered by the authority.

This will require a further period of consultation and thereafter consideration of any further objections received and not withdrawn.

- 5.4 As soon as practicable after an order is made the authority is required to include a copy of the order within the documents held on deposit at the Council's offices and, within fourteen days of the making of the order publish a 'notice of making'; notify the making of the order to any person who has objected to the order; and take such steps as are considered appropriate to ensure adequate publicity is given to the making of the order.

6.0 Risk Assessment

- 6.1 Estimates of income from car parking carry the element of risk in that occupancy levels are increasingly unpredictable and are dependent on more factors than tariff levels, enforcement or available spaces.

7.0 Background and Options

- 7.1 The proposal was originally considered by Cabinet on 16th June 2009 and approved subject to consultation. It was subsequently *called-in* by Environment and Prosperity Scrutiny Committee which sat on 8th July, and whose advice was reported to Cabinet on 14th July. Cabinet then approved the final proposal for statutory consultation, agreeing that this period be extended to 35 days from the statutory minimum of 21 days. The consultation period ended on 2nd September 2009. In addition, 5 public meetings were

held across the former Congleton Borough area to discuss these proposals and listen to the views of residents and businesses.

- 7.2 Many objections were received from the public in all of the affected centres. These are supported in some cases by sizeable petitions. (Members should note that all submissions are available for inspection at Westfields Offices and that these will be available for inspection at the Cabinet meeting). Section 8.0 is a summary of the main grounds cited for objection, which were common to all the centres.
- 7.2.1 A significant volume of objections has come from each of the towns affected by the proposal, both from the public meetings held in each town and from letters and emails.
- 7.2.2 The public meetings attracted attendances as follows: Sandbach approx 150, Congleton approx 100, Middlewich approx 100, Alsager over 200, and Holmes Chapel approx. 50.

8 **Summary of Key Grounds for Objections**

A large number of objections focussed on the following key themes which are summarised as follows:

8.1 **Economic Impact**

- 8.1.1 Objectors felt that parking charges will have an adverse impact on town centre businesses by discouraging customers who may choose to go to other town centres, superstores and retail parks where parking is free. The current recession may accelerate this. In addition, charges penalise low paid or voluntary staff who have to drive to work and for whom employers have no private parking. If businesses lose staff due to parking charges there will be knock-on effects on other businesses which rely on their expenditure in the town. Charging should at least be deferred until the recession is coming to an end.

Response: Effective control through charging will encourage the circulation and turnover of customers on short-stay 'shoppers' car parks and restrict long stay parking in the central locations. There is no clear evidence that the imposition of appropriate charges is the key factor in a customer's decision as to whether to visit a town. It is the retail offer itself which is the main determinant of a destination as well as other factors such as accessibility, convenience and security. Charging can provide the incentive to town centre workers to explore alternative means of travel to work. Equally, charging should encourage employers to assist their colleagues in doing so.

- 8.1.2 Congleton residents and Town Council raised the need for out of town "park and ride" car parks to improve long stay capacity and offer alternatives to charges.

Response: This can be considered subject to land availability but this is not a reason to delay the introduction of charges now in order to achieve a measure of control as well as contributing to the financing of such a facility.

8.2 Impact on Community Groups

8.2.1 Objectors considered that charges unfairly affect the elderly and less able to pay in some locations. Groups such as University of the Third Age (U3A), set up to encourage older people to be active, fear loss of membership and attendance due to parking charges. Community facilities such as churches and community halls, which rely on free use of the car park by their customers, will suffer reduced usage and therefore income. In many instances the car parks are regarded locally as “community assets” which help to promote thriving community and cultural life in the centres.

8.2.2 Similarly, several car parks serve medical centres or surgeries and objectors feel it unfair to charge visitors to these facilities.

Response: This position is similar for other facilities around the Borough, including hospitals, which are already served by charged for car parks. Charging control assists with the availability of spaces and the current proposal uses a low tariff option to minimise the impact on such users.

8.2.3 Parents visiting schools in both Middlewich and Alsager have no choice but to use the car parks especially for safety reasons and so are unfairly affected by charges.

Response: The proposed Order includes a first half hour free on Alsager car park. However this will be extremely difficult and costly to implement. Instead, parents visiting schools or playgroups (Alsager and Middlewich) could be issued with a **parking permit or pass**, specific to the times and days required, which would then only require normal regular levels of patrol to enforce. As this might involve considerable administration, the school could be asked to administer it themselves (ie collect vehicle details, issue and update permits, maintain records and so on).

8.3 Tariffs

Sandbach Town Council suggested that the charges, if introduced, should be at a lower rate of 20p for 1 hour for short-stay but to double the proposed long-stay rates to address the need for control and separation of long stay parkers and encourage shoppers.

Response: It is difficult to justify this cheaper rate solely for Sandbach. If this were agreed it would require a review of all the rates in the Borough. This review is to be undertaken as part of the Budget setting process for 2010/11 anyway and the proposed rate in the Order of 30p is already the lowest across Cheshire East Boorough.

- 8.3.1 Objectors in the smaller centres claim that charges should not be imposed because there is no availability or control issues in these locations and that again, a much lower rate should be considered. Charging in small towns and villages will not be cost –effective in that occupancy will be insufficient to cover operating costs.

Response: Charging is to be introduced consistent with Cheshire East's policy of charging for parking at point of use. Control of long and short stay is most effectively achieved through charging. Financial modelling of these car parks suggest this will be cost effective.

- 8.3.2 Others request a "first hour free" tariff to aid local businesses who wish to encourage "top up shoppers" staying for short periods.

Response: This was previously considered by Cabinet following the call-in and is extremely difficult to put into effect without large capital investment in new technology or virtually full time patrol presence.

- 8.3.3 Some car parks were considered to be wrongly designated: in Congleton, Chapel St should be long stay, with Fairground and Roe Street both needing to be short stay. (In fact these changes were accommodated in the final, advertised proposal). In Holmes Chapel some felt that to control long stay parkers, the car parks needed to be restricted to a maximum of 4 hours.

Response: Restricting long stay is a valid alternative; however with limited space in the village it is felt better to allow long stay albeit with a charge.

8.4 **Alternative Control**

- 8.4.1 Several of the Town and Village Councils were interested in the idea that Cheshire East Borough Council should hand over control of the car parks to them in return for a sum to cover Cheshire East's fixed costs. This approach could be applied to all, or some of the towns concerned. To allow necessary negotiation and legal work, Cheshire East would be asked to defer the introduction of charging pending any agreement.

Response: This solution would fragment traffic and parking control across the Borough, against the aims of the Local Transport Plan and sets a precedent for a piecemeal, ad-hoc approach to the devolution of local powers. Further, it is not yet clear what residual costs or liabilities would lie with Cheshire East and any agreement would need to be in the form of a contract with specific terms and conditions. This suggestion could be considered in the future as part of the Council's overall approach to the *localism* agenda.

8.5 **Legal Impediments**

- 8.5.1 Several objectors cited legal reasons why charges could not be introduced including the existence of Common rights (in Middlewich and Alsager).

- 8.5.2 The issue of Scotch Common has also been given as a reason not to introduce charges in Sandbach at all until it is resolved.

Response: No evidence has been found of other legal impediments affecting the two Middlewich car parks proposed for charging. All other legal issues affecting car parks are dealt with in the Part II report referred to in the original Cabinet Report of 16th June.

8.6 Strategic Considerations

- 8.6.1 Charges should not be imposed without full reviews of parking and traffic control. Off Street charging will otherwise lead to increased on-street parking and therefore lead to worsening traffic control, safety and access problems.
- 8.6.2 Charges should not therefore be decided upon unless and until sustainable public transport alternatives are made adequate and cost-effective.
- 8.6.3 Income from charges, if introduced, should be ringfenced for improvements to local infrastructure and environment.
- 8.6.4 It was also felt that charges should only be imposed in tandem with on-street enforcement powers being granted to Cheshire East BC.

Response: Charging at point of use is in line with the Council's Parking Strategy and the Local Transport Plan as it is recognised as the most effective means of managing supply, accessibility and behaviour in support of a town's broader objectives. Income from charging is first applied to the costs of the service including ongoing improvements to parking facilities. Any surpluses accrue to the Council's General Fund for other services which include the development of sustainable public transport.

8.7 Residents' Parking

- 8.7.1 A number of responses to the Order stated that Residents' Permit Schemes should be introduced alongside the introduction of controls on car parks to avoid displacement problems due to imposition of charges. Introduction of charges should then be deferred until a Residents' Parking Scheme for town centre residents can be rolled out.

Response: It is very difficult to accurately predict the level or impact of any displacement of vehicles resulting from introduction of charging. There is a risk of introducing residents' schemes at considerable cost where they are not actually needed or helpful, whilst delaying the introduction of control and charging. It is usually more effective to react to observed difficulties and tailor scheme solutions to fit the local problem after charging has been introduced. Whilst a Residents' Parking Policy is to be imminently discussed at Scrutiny Committee and shortly submitted to this Cabinet, a simultaneous introduction in every town and projected location is virtually impossible given that the design of a scheme and proper consultation with residents can take up to six months. Residents'

Parking Schemes are currently being piloted in the former Macclesfield Borough Council area.

8.8 Parking for Festivals and Events

- 8.8.1 Several car parks are used periodically by local groups for events and for annual fairs and festivals.

Response: These can be accommodated by existing car parking management policy either through dispensations or temporary closures. The events organisers will not be charged for this.

8.9 Other Free Car Parks

- 8.9.1 Objectors have referred to other towns and villages in Cheshire East where parking is uncharged. In addition, they refer to Council staff and members who receive free parking and claim this is unfair.

Response: All Cheshire East Council operated car parks are to be reviewed and considered for charging using the criteria established in the Parking Strategy. Staff and member parking is also under review by the Council.

8.10 Development and Planning Applications Pending

- 8.10.1 Objectors refer to 'imminent' developments which could affect a decision to charge for parking in that this will act against the development aims of the town centre. In Alsager reference is made by the Town Council to the overall plan for the town contained in the Supplementary Planning Document (SPD) which sets the scene for town centre regeneration to encourage shoppers and visitors.

Response: The imposition of control through charging will assist with the circulation of users and management of our parking assets during major developments. Any loss of space due to development will be the subject of review and negotiation during the development proposal and planning application phases.

9 Overview of Day One, Year One and Term One Issues

- 9.1 Introduction of charges was estimated to result in gross income of £500,000 per annum. The 2009/10 base budget assumed charging would commence at the start of quarter 2. Should the proposals be adopted with effect from 1st October 2009 a resulting shortfall of income amounting to £125,000 would accrue against the base budget. Deferral beyond 1st October 2009 would result in further lost income of £42,000 per month.

For further information:

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Background Documents:

*Consultation File : containing all responses received during the statutory consultation period.
Lodged at Westfields, in John Nicholson's PA Office and available at Cabinet Meeting 8th
September 2009*

Public Documents available at Westfields and on the Cheshire East Website.

Cabinet Report of June 16 2009 (Part I available to the public; Part II is confidential)

Environment and Scrutiny Committee Report of July 8th 2009

Cabinet Report of July 14th 2009

Proposed Off Street Parking Places Order

APPENDIX A: Sandbach Town Council Proposal

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CHESHIRE EAST COUNCIL

CABINET

Date of meeting: 8 September 2009
Report of: Borough Treasurer and Head of Assets
Title: Reserves Strategy 2009-2013
Portfolio Holder Councillor Frank Keegan

1.0 Purpose of report

- 1.1 To review the council's reserves position in relation to current budgetary issues and medium term planning
- 1.2 To make recommendations that centre around general reserve balances, and how they compare to relevant risks, and treatment of earmarked reserves.

2.0 Decision Required

- 2.1 To agree the reserves strategy for 2009-2013.

3.0 Financial Implications for Transition Costs

- 3.1 None.

4.0 Financial Implications 2009-10 and beyond

- 4.1 The strategy for council reserves will impact on all financial years.

5.0 Legal Implications

- 5.1 The decision to ensure adequate levels of reserves are maintained by the authority is consistent with the obligation to make proper arrangements for the administration of the Council's financial affairs imposed by section 151 of the Local Government Act 1972.

6.0 Risk Assessment

- 6.1 The level of reserves is guided by a risk assessment contained within the Strategy.

7.0 Background

- 7.1 In February 2009 Council approved a strategy for reserves as part of the budget setting process. However, this only established treatment of estimated balances and reaction to the adequacy of reserves to support the budget.

- 7.2 In June 2009 members received the draft financial statements for each of the predecessor authorities, providing an updated position in relation to both general and earmarked reserves.
- 7.3 It is now necessary to recognise options for treatment of these balances (with the benefit of 6 months of operation of Cheshire East Council) and establish protocols for the further use of reserves.

8.0 Approach

- 8.1 The attached strategy sets out reasons for holding balances and protocols for the management of these balances, as well as financial detail to support this approach.
- 8.2 Once established the strategy will support the budget setting process for 2010/2011 and provide officers and members with clarity over the position and further treatment of reserves.

9.0 Recommended

9.1 That Cabinet:-

- 9.1.1 Note the estimated opening balance for Cheshire East Reserves
- 9.1.2 Note risks associated with the need to hold general reserves
- 9.1.3 Note the impact of transitional costs from re-organisation
- 9.1.4 Note that earmarked balances of £4.73m have been identified for transfer to General Reserves.
- 9.1.5 Create a new earmarked Reserve of £5m to support further voluntary redundancy costs in 2009/2010
- 9.1.6 Adopt the reserves strategy and agree the protocols included within it related to further treatment of earmarked balances
- 9.1.7 Agree to the comprehensive review of remaining earmarked balances taking place as part of the mid-year financial review

10.0 Reason for Recommendations

- 10.1 The Council must establish a Reserves Strategy to provide a framework for the treatment of balances and to support sound financial management and planning.

For further information:

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Background Documents:

None



Reserves Strategy

2009-2013

DRAFT

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Executive Summary

Cheshire East Council will maintain reserves for two main purposes:

- 1. to protect against risk, and;**
- 2. to support investment**

The Reserves Strategy sets out the requirements with regard to the maintenance of adequate financial reserves and provides statements on the types of reserves and current and predicted balances.

This strategy describes the particular local factors which need to be taken into account by the Council, including the assessment of key risks, and sets out principles for the management of balances for the period 2009 – 2013.

The report follows guidance issued by the Chartered Institute of Public Finance & Accountancy ~ *LAAP Bulletin 55 – February 2003: Guidance Note on Local Authority Reserves and Balances*. Compliance with the guidance is recommended in the Institute's 2003 Statement on the Role of the Finance Director in Local Government. And the regulatory framework and role of the Chief Finance Officer are set out in Annex 1.

The opening balances for Cheshire East Council reserves come from the information supplied on the draft balance sheets of the 4 predecessor local authorities in Cheshire east area. This strategy represents a total review of the balances previously held to ensure they meet the needs of Cheshire East Council.

1. Introduction

Types of Reserves

1. When reviewing medium term financial plans and preparing annual budgets, the council must consider the establishment and maintenance of reserves. These can be held for three main purposes:
 - a **working balance** to help manage the impact of uneven cash flows and avoid unnecessary temporary borrowing – this forms part of general reserves
 - a **contingency** to cushion the impact of unexpected events or emergencies – this also forms part of general reserves
 - a means of building up funds, often referred to as **earmarked** reserves, to meet known or predicted liabilities

Assessing the Adequacy of Reserves

2. In order to assess the adequacy of unallocated general reserves when setting the budget, the Borough Treasurer will take account of the strategic, operational and financial risks facing the authority. The council will therefore adopt formal risk management processes. The Audit Commission Code of Audit Practice make it clear that it is the responsibility of the audited body to identify and address its operational and financial risks, and to develop and implement proper arrangements to manage them, including adequate and effective systems of internal control. The financial risks will be assessed in the context of the authority's overall approach to risk management.
3. There is now a requirement for local authorities to include an Annual Statement of Governance with the statement of accounts. The Chief Finance Officer will ensure that the authority has put in place effective arrangements for internal audit of the control environment and systems of internal control as required by professional standards.
4. Setting the level of general reserves is just one of several related decisions in the formulation of the medium term financial strategy and the budget for a particular year. Account will also be taken of the key financial assumptions underpinning the budget alongside a consideration of the authority's financial management arrangements.
5. **Table 1** (below) sets out the significant budget assumptions that are relevant when considering the adequacy of reserves that are in addition to the issue of cashflow:

Table 1: Holding adequate reserves will depend on a number of key factors

Budget Assumptions	Financial Standing & Management
The treatment of inflation and interest rates	The overall financial standing of the authority (level of borrowing, debt outstanding, council tax collection rates etc)
Estimates of the level and timing of capital receipts	The authority's track record in budget and financial management including the robustness of the medium term plans
The treatment of demand led pressures	The authority's capacity to manage in-year budget pressures
The treatment of planned efficiency savings/productivity gains	The strength of the financial information and reporting arrangements
The financial risks inherent in any significant new funding partnerships, major outsourcing arrangements or major capital developments	The authority's virement and end of year procedures in relation to budget under/overspends at authority and departmental level
The availability of other funds to deal with major contingencies and the adequacy of provisions	The adequacy of the authority's insurance arrangements to cover major unforeseen risks

Source: CIPFA ~ LAAP Bulletin 55, 2003

6. These factors can only be assessed properly at local level. A considerable degree of professional judgment is required. The Borough Treasurer may choose to express advice on the level of balances in cash and/or as percentage of budget (to aid understanding) so long as that advice is tailored to the circumstances of the authority for that particular year.
7. Advice will be set in the context of the authority's Medium Term Financial Strategy and not focus on short term considerations, although balancing the annual budget by drawing on general reserves may be a legitimate short term option. However, where reserves are to be deployed to finance recurrent expenditure this should be made explicit, and will occur only to pump prime investment and not to provide on-going support for such costs. Advice should be given on the adequacy of reserves over the lifetime of the Medium Term Financial Strategy.
8. The current guidance requires the purpose, usage and the basis of transactions of earmarked reserves to be identified clearly. A review of the levels of earmarked reserves will be undertaken as part of annual budget preparation.
9. Capital reserves will be maintained as part of the Capital Strategy monitoring and review. Such balances will inform decisions on borrowing and general management of the capital programme.

2. General Fund Reserves (Revenue)

Purpose

10. The purpose of general reserves is to minimise the possible financial impacts to the authority from:
- Emergencies;
 - In-year emerging issues;
 - Peaks in expenditure from policies spanning more than one year
11. Finance Procedure Rules require Council approval for any expenditure which is to be funded from reserves, except where an appropriation from reserves is by way of an advance which is supported by a guaranteed repayment plan.
12. In all cases the use of reserves should be approved by the Borough Treasurer.

Opening Balances

13. The opening balance for Cheshire East Council general reserves is anticipated to be £24,449m. **Table 2** (below) shows how this balance picks up balance sheet totals for predecessor authorities, deducts new earmarked reserves created by Cheshire East Council in February 2009, and adds back earmarked reserves that are no longer required.
14. **Table 2** (below) reflects current estimates and it is important to note that there is still some scope for amendments, following audit and final agreement on disaggregation of the County Council balance sheet, so figures are still provisional at this stage.

Table 2: The opening balance is still subject to Audit

	General Reserves £000
Closing Balance for Predecessor Authorities	25,545
Less Additional Earmarked Reserves (Budget 2009)	(1,096)
Opening Balance for Cheshire East Council	24,449

Source: CEC Finance August 2009

15. Transitional costs, from local government reorganisation, have been met from general reserves, and by making a contribution from revenue income each year those reserves will be replaced. In addition the level of reserves needed will be assessed each year according to the risks facing the Authority (see Risk Assessment below). **Table 3** (below) summarises the current estimated movements in general reserves from 2009 to 2012:

Table 3: Reserves should remain high enough to meet potential risks

	2009/10	2010/11	2011/12
	£000	£000	£000
Balance @ 1st April	24,449	29,535	35,152
Increases in Reserves			
- Potential transfers from Capital to General Reserves*	1,030		
- Contingent Asset (VAT reclaim) net of fees*	3,450	600	
- Contribution from Earmarked Reserves ^(see S.3)	4,728		
- Business Finance Loan Repayments*	392	278	146
- Unbudgeted 2009/2010 LABGI Income*	291		
Decreases in Reserves			
- Recession Group*	(331)		
- Crewe Masterplan*	(125)		
- Policy & Performance Structure*	(375)		
- VR Round 2 (to earmarked Reserves)*	(5,000)		
Impact of Transition Costs			
- Budgeted Repayment of Transitional Costs*	2,750	6,713	6,713
- Less Transition costs Relocation*	(500)	(750)	(750)
- Less Voluntary Redundancy - actuarial costs*	(1,224)	(1,224)	(1,224)
 Sub total - General Reserves @ 31st March	 29,535	 35,152	 40,037
 Risk Assessed Minimum Level	 25,830		
 Un-Allocated Balance	 3,705		

Source: Cheshire East Finance ~ August 2009

*for a detailed description of each emerging issue please refer to appendix 2

**see Invest-to-Save below

16. The reserves position for 2009/10, as detailed in **Table 3** (above), demonstrates the aim of Cheshire East Council to repay Transitional Costs and Voluntary Redundancy costs over the three-year planning period, and repay resultant actuarial costs over the five year negotiated settlement period.

17. The in-year use of general reserves will require council approval and must not be used for any level of recurring spending, unless that spending will be included in revenues budgets in the following financial year or a suitable payback period is agreed in advance.

Invest-to-Save

18. In line with the purpose of holding reserves, the council can earmark funds to promote investment in more efficient ways of delivering services.

19. The un-allocated balance of General Reserves in Table 3 (above) could be used to support service aspirations in delivering lean and effective ways of working.
20. The protocol around using these reserves is set out in Section 4 (below).

General Fund Reserves - Risk Assessment

21. Local Authorities have often adopted a broad principle that General Fund Reserves would be prudent if equivalent to 5% of the net revenue budget. However, the risks facing each local area will vary, and in the case of Cheshire East the recent impact of reorganisation combined with global recession still presents the potential for significant emerging risk.
22. The desired level of reserves is therefore substantiated by a detailed risk assessment. This approach allows the council to take account of the circumstances around current structural changes and economic circumstances.
23. Where specific financial liability has not been established, or where outcomes from emerging pressures cannot be detailed, the council will assume a level of risk. This reduces the possibility that the council will be exposed to financial pressure and smoothes the impact on citizens.
24. Risks are categorised, and potential values are applied to them, this presents the potential exposure to financial risk. **Table 4** (below) shows the risk areas and the level of reserves the council should retain to mitigate that risk. In each case the value of the risk retained has been calculated as a percentage of the potential impact. The percentage is based on the likelihood of the risk actually achieving that total impact.
25. It is possible that a number of events could happen in a single year, it is also possible that the Council could be exposed to new risks, or risks which are not able to be separately assessed. For this reason the analysis also contains a Strategic Reserve based on a percentage of the net revenue budget.
26. Risks will be included and managed using the following basic principles:
 - a. The risk may impact within the medium term
 - b. Risks are potential one-off events
 - c. The risk will have genuine financial consequences
 - d. Mitigating actions will be in place to minimise the potential requirement for financial support
 - e. If a risk event becomes certain (ie. probability is 100%), an earmarked reserve will be established to cover the projected financial impact.
 - f. Emerging risks will be addressed from in-year surplus or virement before any request to allocate general reserves

Table 4: A robust level of reserves is guided by an assessment of potential risks

Class of Risk	Effects	Effect on budget / mitigating Action	Value of risk retained
Health & Safety	Major loss of service	Increased cost to reduce further risk of breach / Robust risk assessments	£100,000
	Loss of income	Substantial disruption to income streams / Robust disaster recovery	£50,000
	Lost reputation	Cost of new advertising to regain confidence / Effective Communication Plans	£10,000
	Effect on recruitment	Additional advertising costs to attract staff / Employment options on standby	£20,000
Fire / Structural damage by flood etc	Major loss of service	Premises not operational / Robust disaster recovery plan	£100,000
	High sickness levels (eg Flu Epidemic)	High staff sickness & absence costs / raise awareness of safety measures	£920,000
	Insurance claims create rising premiums or cost to insurance reserves	Budget growth to cover premiums or self insurance costs / Good claims management	£25,000
Budget Pressures	Income from fees and charges affected by economic downturn	Up to 5% loss of income from fees & charges from local economic pressures / prudent income targets, close in year monitoring	£1,400,000
	Local Taxation Payments fall due to economic downturn	Reduced cashflow / prudent cashflow projections, sound recovery strategy	£60,000
	Efficiency savings challenged by changing priorities	In-Year emerging issues / Robust plans and monitoring of progress	£5,000,000
	Payback to reserves not achievable	In-Year emerging issues / Robust plans and monitoring of progress	£1,375,000
	Costs of Redundancy and early access to pension is beyond scenario, outturn figures do not match current predictions	Impact on opening balances / apply prudent assumptions to opening balances	£250,000
	Services not able to absorb savings	Sept 2009: Potential shortfall in medium term financial strategy / early planning and consultation	£2,650,000
	Sept 2009: Corporate Priorities require additional growth bids		
ICT & Security	Court Fine and need to improve security	Up to 10% fine on turnover / robust security processes	£250,000
	Data corruption	ICT service days to repair, loss of service / robust security policies and firewalls	£50,000
Industrial relations / External organisations failure	Disruption to service and possible costs of arbitration/tribunal	Loss of income, costs of providing essential services or direct costs of resolution, reduced pay budget / emergency planning	£50,000
Strategic Reserve		Sept 2009: Extended due to potential need for further invest to save options and future pay structure changes.	£13,520,000
OVERALL RISKS			£25,830,000
% of Net Revenue Budget			11.0 %

Source: Cheshire East Finance Aug 2009

27. The outcome of this analysis has been to place an estimated total value on the range of risks that may arise and which are not covered by insurance. This is equivalent in total to £25.830m.

Adequacy of General Reserves

28. A duty of the Chief Finance Officer is to comment on the adequacy of financial reserves (see Appendix 1). From the evidence supporting this report and with regard to the current economic climate my assessment is that reserves levels at 1st April 2009 are within tolerance levels and can be considered adequate. I also consider them to be adequate in terms of working balances.

29. The estimates contained within the Medium Term Financial Strategy are sufficiently robust to achieve the required repayment of reserves in the medium term following transition. I take this view based on the assessment of risk particularly in regard to efficiency saving assumptions within the draft 2009/2010 Budget.

3. Earmarked Reserves (Revenue)

Purpose

30. The purpose of earmarked reserves is:

- a. To even out the impact of one-off or variable expenditure by allowing balances to be set aside for future spending.
- b. To set aside amounts for projects that extend beyond 1 year

31. Once Earmarked reserves have been established by Council it is the responsibility of Chief Officers, in consultation with the Borough Treasurer to ensure balances are spent in line with the agreed purpose.

32. **Table 5** (below) identifies the most commonly established earmarked reserves and the rationale behind why such reserves are created and maintained.

Table 5: All earmarked reserves should have a clear rationale

Category of Earmarked Reserve	Rationale
Sums set aside for major schemes, such as capital developments or asset purchases, or to fund major reorganisations	Where expenditure is planned in future accounting periods, it is prudent to build up resources in advance
Insurance reserves	Self-insurance is a mechanism used by a number of local authorities
Reserves of trading and business units	Surpluses arising from in-house trading may be retained, or may have to be retained by statute to cover potential losses in future years, or to finance capital expenditure
Reserves retained for service departmental use	Increasingly authorities have internal protocols that permit year-end surpluses at departmental level to be carried forward
School Balances	These are unspent balances of budgets delegated to individual schools

Source: CIPFA ~ LAAP Bulletin 55, 2003

33. For each earmarked reserve held by Cheshire East Council there will be a clear protocol setting out:

- the purpose of the reserve
- how and when the reserve can be used
- procedures for the reserve's management and control
- a process and timescale for review of the reserve to ensure continuing relevance and adequacy
- clear indication of payback periods and approach (if applicable)

34. When establishing reserves, Cheshire East Council will ensure that it complies with the Code of Practice on Local Authority Accounting in the United Kingdom and in particular the need to distinguish between reserves and provisions.

35. The protocol for Cheshire East Council's earmarked reserves is set out below. The Borough Treasurer will monitor adherence to these protocols.

Earmarked Reserves will be:

- Set up by Full Council, following recommendation from the Borough Treasurer
- Supported by a business case
- Held for a maximum of 3 years, except where the business case justifies longer retention.
- Subject to a minimum value, set initially at £60,000.
- Be reviewed at least annually

36. Services may also carry forward balances strictly in accordance with Financial Procedure Rules.

37. At 1st April 2009 Cheshire East Council is anticipated to hold earmarked reserves to the value of £13.866m. **Table 6** (below) shows the anticipated opening balances of earmarked reserves, having allowed for balances from each contributing local authority and for further allocations by Cheshire East Council.

38. **Table 6** (below) identifies the original balance anticipated within the 2009/2010 Budget, then the actual balance clarified as part of the accounts closure process for previous authorities. Some balances are recommended to be returned to general balances to increase flexibility for those funds. A further, comprehensive, review will take place as part of the Mid-Year Review of Cheshire East finances, the intention being to establish balances following the protocols outlined above.

Table 6: Earmarked Reserves can pump prime initiatives that may deliver future savings

Description	Cheshire East Budget 2009/2010	Actual Carried Forward Position	Recommended amount to be returned to General Fund	Balance to be retained for 2009/2010	Reason / Use
	£000	£000	£000	£000	
Insurance Reserve	1,368	698		668	Claims experience
Economic Development	650	650		650	To provide capacity for statutory and development requirements in 2009/2010
Benefits appeals reserve	400	400	(400)	0	relates to Alternative Futures case, still needs to be reserved
Building Control Surplus	329	581		581	ring-fenced surplus (could be used to offset service deficit, if applicable)
Education All Risks	307	308		308	Premiums paid by schools
Job Evaluation	300	300		300	intended to be used to offset final protected pay in 2009/10

Description	Cheshire East Budget 2009/2010	Actual Carried Forward Position	Recommended amount to be returned to General Fund	Balance to be retained for 2009/2010	Reason / Use
	£000	£000	£000	£000	
LPSA Reserve (continuation funding)	246	2,904	(2,411)	493	Now includes accrued funding for 2009/2010
Crewe town centre development transitional shortfall (LABGI-funded)	219	219		219	earmarked to cover costs and income shortfalls (car parks etc.) during Crewe town centre re-development
Environmental Warranties	188	168		168	self-insurance for possible claims from Cheshire Peaks and Plains
Customer Access	177	177		177	To maintain service levels in 2009/2010 and allow development of invest to save options
Single status/ job evaluation	150	186		186	intended to be used to offset final protected pay in 2009/10
Markets - Disturbance costs/ new stalls (LABGI-funded)	150	154		154	intended for spending during and after Crewe town centre re-development
Collection Fund Discretionary Relief	142	139		139	Balance available to give discretionary relief on business rates
Local Development Framework	141	150		150	Service budget balance brought forward
Long Term Sickness	135	96		96	Premiums paid by schools
S117 Reserve	130	130		130	Population
Tatton Park - accumulated surplus	114	1,374		1,374	Tatton Park in East
Disturbance Payments	111	122		122	Set aside sum covering costs from relocation of staff due to office centralisation
Community Safety	109	109		109	To provide additional capacity in 2009/2010, which will enable invest to save options to be adapted for future years
Local Development Framework	100	100		100	To provide additional capacity in 2009/2010 only
Grants Panel	71	73		73	Balance available for community projects
Part-time Rangers	62	62		62	earmarked for spending on additional hours for ranger service
Economic & physical development projects (LABGI-funded)	474	842		842	approved for strategy development/ business promotion initiatives
United Utilities	60	60	(60)	0	no longer required, transfer to GF WB
Trading Standards	60	60		60	To protect against possible shortfall in essential service during 2009/2010
M/S Car Park Repair	54	54		54	return to service budget
Queens Park	52	29		29	

Description	Cheshire East Budget 2009/2010	Actual Carried Forward Position	Recommended amount to be returned to General Fund	Balance to be retained for 2009/2010	Reason / Use
	£000	£000	£000	£000	
Safer Communities – PCSOs and Alley gates maintenance	66	74		74	earmarked for PCSOs/ ASB Co-ordinator commitments and maintenance of gates
Crewe Business Park - Marketing Office rent	46	46		46	approved for repairs/ costs in the event of transfer of management of Park
Cumberland pitch renewal (CNBC share)	31	30		30	following major investment, using annual additional surplus to build a fund to renew in future
Community Wardens - Fixed penalties income	24	34		34	ring-fenced for improving cleanliness of public spaces
Treasury - Temporary staff	20	37	(37)	0	will be used to cover temp staff for closure of 2008/09 Accounts
Environmental Protection Act	14	14		14	intended for environmental emergency response situations
Lottery	10	10	(10)	0	Balance available for community projects or transfer to General Fund WB
Macclesfield Silk Heritage	10	0		0	Balance used 2008-09
Environmental Fund	8	8	(8)	0	Balance available for community projects or transfer to General Fund WB
European Links	8	0		0	Balance available to match fund community projects
M/c Airport Partnership Fund	6	6	(6)	0	Balance available for community projects or transfer to General Fund WB
Childcare Vouchers	1	0		0	Balance used 2008-09
Local Authority Business Growth Incentive		625	(625)	0	
Interest Free Loans		624	(624)	0	Available to transfer to GF WB
ICT Investment Reserve		250	(250)	0	
Deferred VR Payments		222		222	To be paid in 2009-10
Mercury Emissions abatement scheme		138		138	
Macclesfield Crematorium mercury credits		131	0	131	Ring-fenced for future investment in crematorium plant
Pension Adjustment Contingency		109	(109)	0	Available to transfer to GF WB
On-Street Parking		90		90	
Commuted Community Sums		82		82	Deferred Grants related to S.106 funding
Direct Action		74	(74)	0	Available to transfer to GF

Description	Cheshire East Budget 2009/2010	Actual Carried Forward Position	Recommended amount to be returned to General Fund	Balance to be retained for 2009/2010	Reason / Use
	£000	£000	£000	£000	
WLC Rates Refund		71	(71)	0	WB Available to transfer to GF WB
Leisure		70		70	
Lottery Partnership		69	(35)	34	Some outstanding payments due, balance available to transfer to GF WB
Leisure Services Review		54		54	Residual balance from ongoing leisure review project
PLC Rates Refund		49		49	Return to service budget
Insurance Fund (ACP)		39		39	Transfer to Insurance Fund
Community Development		37		37	
Repairs/Renewals Fund		17		17	Outstanding payment due in 2009-10
Electoral Administration Act		11		11	Earmarked for Elections
Electoral Inspections		4	(4)	0	Available to transfer to GF WB
Home Computing Initiative		4	(4)	0	Available to transfer to GF WB
Public Buildings repair & maintenance		265		265	
Electric unmetered supplies		55		55	
Infrastructure Surveys		52		52	
- public open spaces					
Planning - Local Plan		42		42	
Transport - Shredder		40		40	
Community Led		28		28	
Public Realm					
Town Centres		23		23	
Entertainment					
08/09 ABG Climate Change Grant		22		22	
Land Charges		22		22	
Gateways & Corridors		20		20	
Industrial Estates - repairs		16		16	
Housing Strategy		14		14	
Local Strategic Partnership		12		12	
Planning - Office furniture/ DIP		11		11	
Economic Development - Rent review		10		10	
Rigg St open space improvements		10		10	
Cemetery & Crematorium		10		10	
Economic		9		9	

Description	Cheshire East Budget 2009/2010	Actual Carried Forward Position	Recommended amount to be returned to General Fund	Balance to be retained for 2009/2010	Reason / Use
	£000	£000	£000	£000	
Development Marketing					
Democratic Services (Ward budgets)		7		7	
Public conveniences		6		6	
Economic Development - H&S furniture/ equipment		5		5	
Leased Htg Terminations		5		5	
Economic Development - Small projects		3		3	
Home Safey Initiative		3		3	
Economic Development - Village stores		1		1	
Traffic management/ modelling		1		1	
Overall Balances*	6,543	13,866	(4,728)	9,138	

Source: Statutory Accounts for Cheshire County & Cheshire East Districts June 2009

* increases or reductions in earmarked reserves have been reflected when stating the opening General Reserves position in Section 2

39. **Table 6** (above) shows a value of £4.728m being returned to General Reserves in September 2009. However, to reflect the impact of a second round of voluntary redundancies it is also proposed to create a further earmarked reserve of £5m.

40. Earmarked reserves have the effect of transferring the tax burden across financial years as current taxpayers' funds are being used to support future years' spending. It is therefore recommended that the Council's earmarked reserves are subject to annual review, at least as part of the budget-setting process to ensure that they are still appropriate, relevant and adequate for the intended purpose.

4. Capital Reserves

41. The purpose of capital reserves is to:
 - a. Minimise risk from potential emergency spending requirements on assets
 - b. Support investment in tangible and intangible assets
 - c. Hold committed balances, where spending is restricted to capital schemes, to support cashflow and investment income
42. The capital reserves held by each former authority of Cheshire East are currently being reviewed and in the main the reserves contain the funding for committed capital schemes.
43. Departments have been asked to review the current capital programme with a view to rationalising schemes where possible, and removing any which do not meet the aims and objectives of Cheshire East.
44. In considering the available funding for the capital programme, schemes will be cross referenced to Section 106 agreements and commuted sums and where possible funded from this source.

5. Conclusion

45. Overall the council is holding relatively high reserve balances due to the significant risks from creating a new authority in the current economic climate. This recognises local issues and allows the Borough Treasurer to comment favourably on the adequacy of reserves.
46. The establishment of protocols around the use of balances will improve control and increase openness in financial reporting and management. This will also reflect well in external assessment of the council's financial standing.
47. The next steps, in reviewing capital and earmarked reserves will complete the process of simplifying the presentation and understanding of the council's reserves position.

Background Papers

CIPFA, Local Authority Accounting Panel: Bulletin 55, Local Authority Reserves & Balances (2003)

General Fund Reserves ~ Risk Assessment Working Papers 2009

Final Accounts 2008/2009:

- Cheshire County Council
- Congleton Borough Council
- Crewe & Nantwich Borough Council
- Macclesfield Borough Council

Cheshire East Council Budget 2009/2010

Appendix 1

Protocol & Controls

The Existing Legislative/Regulatory Framework

Sections 32 and 43 of the Local Government Finance Act 1992 require billing and precepting authorities in England and Wales to have regard to the level of reserves needed for meeting estimated future expenditure when calculating the budget requirement.

There are three significant safeguards in place that militate against local authorities over-committing themselves financially:

1. The balanced budget requirement
2. Chief Finance Officers' S114 powers
3. The External Auditor's responsibility to review and report on financial standing.

The balanced budget requirement is reinforced by section 114 of the Local Government Finance Act 1988 which requires the Chief Finance Officer to report to all the authority's councillors if there is or is likely to be unlawful expenditure or an unbalanced budget. This would include situations where reserves have become seriously depleted and it is forecast that the authority will not have the resources to meet its expenditure in a particular financial year. The issue of a section 114 notice cannot be taken lightly and has serious operational implications. The authority's full council must meet within 21 days to consider the S114 notice and during that period the authority is prohibited from entering into new agreements involving the incurring of expenditure.

While it is primarily the responsibility of the local authority and its Chief Finance Officer to maintain a sound financial position, External Auditors have a responsibility to review the arrangements in place to ensure that financial standing is soundly based. In the course of their duties External Auditors review and report on the level of reserves taking into account their local knowledge of the authority's financial performance over a period of time. However, it is not the responsibility of auditors to prescribe the optimum or minimum level of reserves for individual authorities or authorities in general.

The Role of the Chief Finance Officer

It is the responsibility of the Chief Finance Officer to advise local authorities about the level of reserves that they should hold and to ensure that there are clear protocols for their establishment and use. There is no statutory minimum.

Local authorities, on the advice of their Chief Finance Officers, are required to make their own judgements on the level of reserves taking into account all the relevant local circumstances. Such circumstances vary. A well-managed authority, for example, with a prudent approach to budgeting should be able to operate with a relatively low level of general reserves. There is a broad range within which authorities might reasonably operate depending on their particular circumstances.

Good Governance

It is important that Members take responsibility for ensuring the adequacy of reserves and provisions when they set the budget. CIPFA recommend that the respective roles of officers and Councillors in relation to reserves should be codified locally and given due recognition in the Constitutions. This codification should:

- state which council bodies are empowered to establish reserves
- set out the responsibilities of the Chief Finance Officer and Councillor – or group of Councillors – responsible for finance
- specify the reporting arrangements

A New Reporting Framework

The Chief Finance Officer has a fiduciary duty to local taxpayers, and must be satisfied that the decisions taken on balances and reserves represent proper stewardship of public funds.

The level and utilisation of reserves will be determined formally by the Council, informed by the advice and judgement of the Chief Finance Officer. To enable the Council to reach its decision, the Chief Finance Officer should report the factors that influenced his or her judgement and ensure that the advice given is recorded formally. Where the advice is not accepted this should be recorded formally in the minutes of the council meeting.

CIPFA recommended that:

The budget report to the Council should include a statement showing the estimated opening general reserve fund balance for the year ahead, the addition to/withdrawal from balances, and the estimated end of year balance. Reference should be made as to the extent to which such reserves are to be used to finance recurrent expenditure this should be accompanied by a statement from the Chief Finance Officer on the adequacy of the general reserves and provisions in respect of the forthcoming financial year and the authority's medium term financial strategy.

A statement reporting on the annual review of earmarked reserves should also be made at the same time to the Council. The review itself should be undertaken as part of the budget preparation process. The statement should list the various earmarked reserves, the purposes for which they are held and provide advice on the appropriate levels. It should also show the estimated opening balances for the year, planned additions/withdrawals and the estimated closing balances.

Appendix 2

Detail of planned changes in general reserves

Transfer from Capital Reserves ~ £1,030,000

Some HRA and ex-district LABGI funding was previously allocated as un-allocated Capital receipts, however, to increase flexibility it is more appropriate to present these as Revenue Reserves for Cheshire East Council.

Contingent Asset ~ £3,450,000

The former Cheshire authorities entered in to a contract with Price Waterhouse Coopers, to reclaim overpaid VAT. The claim, to the total value of £3,700,000 is likely to be paid within 2009. Of this sum, £250,000 relates to overpaid VAT on Tatton Park income and this will be credited to the Tatton Park accumulated surplus shown in Table 4. The balance will accrue to general reserves.

Business Finance Loans ~ £392,000

Repayments of residual Cheshire County Council Business Finance Loans are still being allocated to general reserves

LABGI ~ £291,000

The allocation of £291,000 from central government was not sufficiently certain to include in the 2009/2010 budget.

Transitional Costs

The total cost of transition may still be subject to alteration, however the principle remains to payback within 3 years (or five years for actuarial payments). Relocation costs are subject to contribution from Cheshire West and Chester and remain estimates until the accommodation strategy has been finalised.

Recession group

Cabinet have approved an allocation to support recession mitigation activities.

Crewe Masterplan

Cabinet have approved support to this project in principle should it be required

Policy & Performance Restructure

For 2009 only, the restructure within Policy and Performance will be supported by the use of general reserves

Voluntary Redundancies (round 2)

A second round of voluntary redundancies remains likely, to the extent it is now prudent to earmark reserves, by transferring £5m from general reserves

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting: 8 September 2009
Report of: Borough Solicitor
Subject/Title: Joint Waste PFI Scheme
Portfolio Holder: Councillor Peter Mason

1.0 Report Summary

- 1.1 This report describes the steps that must be taken to ensure that the proposed joint waste PFI scheme receives the necessary legal certification to satisfy external financial sources.

2.0 Decision Requested

- 2.1 Cabinet is requested to consider whether it is willing –
- 2.1.1 To issue certificates under the Local Government (Contracts) Act 1997 for the purpose of the PFI waste procurement contract referred to above;
 - 2.1.2 To invite the Borough Treasurer and Head of Assets as section 151 officer to sign and issue certificates on the council's behalf as the Certifying Officer;
 - 2.1.3 Given that the certificate is being given in a personal capacity by the certifying officer, to provide an indemnity to the Certifying Officer ;
 - 2.1.4 To give authority to the Borough Solicitor and Monitoring Officer to execute a form of indemnity (prepared on advice) in favour of the Certifying Officer and to ensure that appropriate insurance cover is either in hand, or can be written to back up that indemnity by the date of its execution;
 - 2.1.5 To allow the Certifying Officer to take independent legal advice on the form of certificate and related due diligence which may be necessary, and to pay for that legal advice. (Noting that the appointment of legal advisers will form a permitted exception under Contract Standing Order E24).

2.1.6 To confirm that the Council's common seal can be affixed to the appropriate deeds of indemnity.

2.1.7 To note and confirm that arrangements will need to be made for the deposit of the certificate, for copies to be made available to the public and for it to be placed for inspection, and for the taking of copies of the certificate if the members of the public require, and for copies to be lodged with the Council's Monitoring Officer and Auditor;

2.1.8 To otherwise approve this report as a matter of record.

3.0 Reasons for Recommendations

3.1 To ensure that tenderers can provide the necessary comfort that the proposed scheme is within this councils legal powers.

4.0 Wards Affected

4.1 All wards

5.0 Local Ward Members

5.1 N/A

6.0 Policy Implications including - Climate change - Health

6.1 Waste treatment has direct links to climate change and health.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

7.1 None (*discussed with but not finalised by Borough Treasurer*)

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

8.1 Certification is required to enable a contract to be completed for delivery of the Waste PFI, which is intended to avoid stringent financial penalties in future years. Officers are currently investigating whether any additional premium is required from the Councils insurers to support the indemnity, subject to a policy excess. Quotes will be sought before finalising the choice of legal advisers for

the S151 officers but indicative costs are in the region of £10,000, (*discussed with but not finalised by Borough Treasurer*)

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 As stated in the report, which has been drafted by Messrs Towers and Hamlin, the solicitors acting for the councils on the waste PFI scheme.

10.0 Risk Management

- 10.1 Failure to let the waste management contract promptly following the conclusion of the tendering process may involve the council in financial loss.

11.0 Background and Options

INTRODUCTION

- 11.1 The Cheshire-wide Waste PFI Treatment Services Contract ('the PFI Contract') will now be entered into by the two Unitary Authorities, Cheshire West and Chester Council and Cheshire East Council. Pursuant to an Inter Authority Agreement between the two Councils dated the 26th March 2009 which sets out obligations between the two Authorities as to how they will manage this major PFI waste contract procurement, they have primary obligations to cooperate expeditiously and act reasonably so as to manage the procurement effectively, and also to provide for the PFI contract to be certified for the purposes of the Local Government (Contracts) Act 1997.
- 11.2 The purpose of the PFI Contract is to provide long term waste treatment facilities and related services under the Private Finance Initiative to enable the Councils to fulfil their joint aim to improve the quality of the services and to meet the economic, social and environmental well being needs of their residents and comply with the objectives of the National Waste Strategy issued pursuant to the Environmental Protection Act 1990 and the Landfill Directive 1999 and Waste Emissions and Trading Act 2003, all in order to divert biodegradable waste from landfill and achieve various important statutory targets.
- 11.3 This is pursuant to the principal partnering obligations set out in that agreement. Initially Cheshire West and Chester is the lead authority but is accountable to Cheshire East but both Authorities are bound by those partnering obligations and the need to provide certification requirements, (1) for the purposes of the 1997 Act, and regulations

made thereunder, and (2) the commercial requirements to contractually close this major PFI procurement.

11.4 This Report addresses:

- 11.4.1 The relevant legislation and current position of the PFI Procurement;
- 11.4.2 The requirement to provide a Local Government (Contracts) Act 1997 Certificate (the reason why the Council should do this is detailed in Section 4 below);
- 11.4.3 the legal due diligence matters relevant to issues regarding the Certifying Officer in relation to the PFI Contract; and
- 11.4.4 further steps and resolutions which the Council needs to take and adopt.

RELEVANT LEGISLATION

- 11.5 The Local Government (Contracts) Act 1997 relates to major projects made under the Private Finance Initiative. It was brought in to deal with an issue which arose after a number of highly celebrated cases in the 1990s which created uncertainty over local authority powers to enter into similar contracts. Because of the activities of certain authorities acting *ultra vires* i.e. beyond their statutory powers, the financial markets were reluctant to lend to local authorities and to accept that, despite other provisions in various local governance finance acts relating to local government, there was no 'safe harbour' to give them protection should a local authority be found subsequently to have acted *ultra vires*.
- 11.6 The Local Government (Contracts) Act 1997 therefore creates an assumption of legality for PFI and similar contracts but relies upon a certification process. The certificate is given by a certifying officer. The certifying officer can only be appointed in accordance with the appropriate Regulations and in this case it is proposed that it should be the Section 151 Officers of both unitary authorities (as the Project Agreement will be entered into by both authorities on a joint and several basis).
- 11.7 It is therefore necessary for both Cheshire East and Cheshire West and Chester Councils to sign and execute the main Waste Treatment Services PFI Contract Project Agreement (the '**PFI Contract**') and for each Council to authorise the issue of a Certificate under the Local Government (Contracts) Act 1997, and

in each case for a certifying officer to sign and issue these certificates.

- 11.8 Certifying officers sign in a personal capacity so it is usual for them to request an indemnity from their respective Authority so that they do not incur undue personal liabilities should a transaction or an aspect of it in due course be held to be *ultra vires*.

THE CURRENT POSITION OF THE PFI PROCUREMENT

- 11.9 The PFI Waste Contract procurement has reached an advanced stage under the Competitive Dialogue, the form of procurement procedure appropriate for complex and major PFI Contracts. We are now dealing with two Bidders – known as 'Participants' under the Competitive Dialogue procedure. Within the relatively near future a preferred Bidder and technical solution will be adopted. It is necessary as part of the procurement programme to plan ahead and ensure that the appropriate governance is in place, and that includes the PFI Contract certification process and the related statutory requirements.
- 11.10 Participants and their funders, (if appropriate) will carry out extensive due diligence into the decision making process of the two Authorities which relates to the PFI Contract Procurement, its documentation and decisions taken both prior to and in particular at commercial and financial close of this major project. That will include reviewing all reports and decisions of the two Unitary Councils, to ensure that they are legally and procedurally correct. The two Authorities are entering into this contract on a joint and several basis. It will therefore require two certificates to be issued and two certifying officers to sign and take responsibility for those certificates.
- 11.11 Each Council needs therefore to authorise the issue of the certificate and in due course after the PFI Contract Closure, to supply copies of the same to the Preferred Bidder, and possibly also to funders, where that is appropriate, and also internally to the Council's Monitoring Officer and to the Council's auditor.
- 11.12 Each Council will also need to ensure that copies of the certificate, once they have been signed, are opened to inspection by members of the public at all reasonable times without payment and also that members of the public are afforded facilities to obtain copies of that certificate on payment of a reasonable fee. These

arrangements will need to be put in place once the certificate is signed which will be after commercial and financial close.

WHY DOES THE COUNCIL HAVE TO PREPARE A LOCAL GOVERNMENT (CONTRACTS) ACT CERTIFICATE?

- 11.13 The purpose of the Local Government (Contracts) Act 1997 as briefly mentioned above in paragraph 1 (Introduction) was to provide reassurance to private sector investors over the powers of local authorities (i.e. its *vires*) to enter into PFI and similar contracts, for the duration of five years or longer. Case law had caused significant concern in the private sector in that there was little recourse available if a project was to be struck down as outside a local authority's power (i.e. it was *ultra vires*). One of the main objectives of the 1997 Act was that local authorities would certify PFI contracts as being within their powers (*intra vires*). Such a certificate would also prevent the local authorities pleading its own *ultra vires* act 'after the event', as a reason to avoid the contractual obligations (which had been the case in one or two earlier controversial cases).
- 11.14 In addition, local authorities are required pursuant to the Act to issue a form of certificate in a particular form and commercially it is accepted practice to certify that the Council entering into such a major PFI procurement is acting within its powers and by implication its related project governance is in order.
- 11.15 If in due course a third party challenge, or for some other reason it was shown that the PFI contract was *ultra vires*, the Preferred Bidder would be entitled to be paid compensatory damages (known as 'relevant discharge terms') in the event of the Council's decision to enter into the PFI contract being declared as outside its powers (*ultra vires*) and hence the contract would be set aside as void.
- 11.16 This is why, as mentioned above, the Preferred Bidder and/or their funders and advisers will carry out an extensive due diligence exercise and as part of the response to that, and in order to give the reassurance that is required, a certificate is issued under the Local Government (Contract) Act 1997.

WHAT DECISIONS ARE THEREFORE REQUIRED OF THE COUNCIL HAVING REGARD TO THE ISSUE OF THE CERTIFICATES.

11.17 Certifying Officers - their duties and scope of the Indemnity from the Council

The Certifying Officer, apart from having general duties to the Council to ensure there is no conflict between their personal interests and the interests of the Council in issuing such certificate, and following their general duty to act with appropriate levels of skill and care, and in the case of the Section 151 officer, to maintain that a general fiduciary duty relating to governance, should consider all relevant matters before issuing a certificate, and in this case in a project of this scale to be entitled to take independent legal advice as to the form of the certificate and the related due diligence issues.

11.18 There is some earlier ODPM guidance (now CLG) which suggests that Council officers do not need to rely upon an indemnity where they act in a personal capacity to give such certificate. However, in the light of certain case law decisions, particularly the *Burgoine v Waltham Forest London Borough Council* [1996] whereby an authority's external auditor brought proceedings against an authority's officer in their personal capacity, where in that case he acted as a director of a local authority company which was then declared *ultra vires*, it is felt that certifying officers should seek personal indemnities on the lines mentioned above. Although the *Burgoine* case was based on particular facts, which do not correlate to this particular project, it is nevertheless relevant in terms of ensuring that proper protection is given to certifying officers in circumstances such as these.

11.19 The Council has powers to indemnify, deriving from a number of statutory provisions, including Section 39 of the Local Government (Miscellaneous Provisions) Act 1976, Section 265 of the Public Health Act 1865, Section 111 of the Local Government Act 1972, and in addition the Local Authorities (Indemnities for Members and Officers) Order 2004.

11.20 The Council, therefore, have sufficient powers to give such an indemnity and delegated authority should be given to the Borough Solicitor and Monitoring Officer to settle the form of indemnity, on advice, and to ensure that appropriate insurance cover has been, or will be effective from the date of the Indemnity (probably contract close - see 11.22 below), following discussions if necessary, with the Council's insurers.

11.21 Some limitations

The issue of a certificate under the 1997 Act does not prevent a public law challenge nor, in more limited circumstances, a private law claim on the grounds of negligence. If an officer has acted perversely or with reckless indifference, for example, as to the outcome of a particular course of action such a claim might be successful. An act of reckless indifference could invalidate an indemnity. However, it is difficult to see how such a liability would arise unless the Officer and the Council were acting in defiance of clear advice that they should not proceed. On the basis of the facts known, this does not appear to be the case in this instance.

11.22 The period for the certificate

The Certificate will commence from the date of contract and/or financial close. These may be simultaneous, but if not, the certificate will relate from the date of commercial contract close. It will be issued in a form to comply with the relevant regulations. An indicative form of Certificate is attached based on the relevant regulations which will form the basis of the certificate to be given. (Appendix 1).

12.0 Overview of Year One and Term One Issues

- 12.1 A decision on the preferred tenderers should be made before the end of year one and contracts should be signed during year two.

13.0 Access to Information

(To be inserted by Travis Hamlins)

The background papers relating to this report can be inspected by contacting the report writer:

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Report

on an investigation into
complaint no 08 003 864 against
the former Cheshire County Council

23 June 2009

**Investigation into complaint no 08 003 864
against the former Cheshire County Council**

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

This report has been produced following the examination of relevant files and documents and interviews with the complainant.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Children and Family Services

L is now a young woman of twenty. When she was a small child she was on the child protection register and then, from the age of 12½, in the care of Cheshire County Council but placed to live with her mother. L's mother suffered from mental illness and was prone to volatile, violent and sometimes bizarre behaviour. L was a bright child but from Easter 2000 her mother stopped her from attending her last year at primary school and, despite being in the Council's care from February 2002, L reached school leaving age in 2005 without ever attending secondary school. The only education that L received from the age of 10 was a maximum of 10 hours a week with a tutor at the local library but there were significant periods without any education.

With the help of the National Youth Advocacy Service, L complained to the County Council about two issues. In her own words:

Why did Children's Services place me with my mother when they knew that she was so violent? They always used to come with two people to see us as they were scared but yet they left little kids with her.

Why was nothing done about my education? I did not go to school after Primary School. I wanted to go, I did. When I was at school I was in the top for Maths and English. I think Children's Services will say lack of communication but they should have tried harder.

Although the Council accepted some fault, L was dissatisfied and complained to the Ombudsman, saying:

"How can they say they know what I wanted when I was only seeing someone every year or so and they were always changing...I could not say get me out of Mum's house because of what she would do to me. And she would not let me go back to school. They normally only spoke to me in front of my Mum anyway. What was I supposed to say in front of her? It took me two or three months to speak properly with [Leaving Care Worker].

They are making it seem like they were being good to me, listening to me and allowing me not to go to school. I wanted to go to school. How was I going to be a lawyer or a police officer if I did not go to school?"

L was the subject of care proceedings that are usually private and confidential. The Ombudsman gratefully acknowledges the kind permission of the Court to use information from those proceedings in this report and the help of the Council's Senior Childcare Solicitor in obtaining the Court's permission.

From February 2002 the Council had parental responsibility for L, with a specific duty to promote her welfare and the power to determine the extent to which her mother could meet her parental responsibilities. The Council also had a general duty to comply with the law, regulations, statutory and other guidance.

While recognising that L's age and declared desire to stay with her mother posed considerable challenges for the Council, the Ombudsman found that it failed, comprehensively and spectacularly, to fulfil its responsibilities for L or to promote her welfare. The Ombudsman refers to this as the over-arching maladministration in L's case.

The Ombudsman also found numerous, serious, specific instances of maladministration, including that the County Council failed to:

- assess L's needs in accordance with the 2000 statutory guidance 'Framework for the Assessment of Children in Need';
- meet L alone and be satisfied that her welfare was appropriately provided for by the placement with her mother;
- realise that her placement was in breach of the law;
- demonstrate any awareness that, as a child in the Council's care, L should have had a full-time place at a local mainstream school;
- use its powers as Local Education Authority to either secure L's attendance at school or ensure that she was receiving a suitable education by other means; and
- make any effective use of information collected on monitoring forms.

L was and is capable of achieving a level of education and qualifications that could make a very significant difference to her earning potential. Although she is succeeding in her current chosen career it is not secure and her lack of education and qualifications may become a major disadvantage for her. The injustice caused to L by the County Council's maladministration is long-term and enduring.

Before L complained to the Ombudsman, the County Council had recognised the consequences of its failures and agreed that L should: have access to leaving care services until she is 25; receive financial support to undertake remedial education; receive 'creative' help with appropriate accommodation.

Finding

Maladministration causing injustice

Recommended remedy

The Ombudsman recommends that Cheshire East Council, as successor to Cheshire County Council, should:

- apologise to L;
- agree with her a detailed plan for delivering the commitments made by the County Council; and
- make £45,000 available either for immediate investment in purchasing a home (by a shared ownership scheme if necessary) or to be held in an interest-bearing account and released to her when she is 30 years of age or in equal annual thirds when she embarks on and maintains a programme of education leading to qualifications – whichever is the sooner.

The Ombudsman also recommends that both successor Councils should consider her report and review their newly established services to children to ensure that they are adequately resourced, staff are properly trained and supervised, and monitoring information is regularly reviewed so that issues of concern are identified and reported to senior managers and an appropriate body of elected Councillors.

Introduction

1. L is the youngest of three children and is now a young woman of twenty. Throughout most of L's childhood her mother was diagnosed as mentally ill and was prone to be volatile, to harm herself, and to very violent and sometimes bizarre behaviour. From being 12½ years old L was subject to Care Orders that gave Cheshire County Council parental responsibility for her and placed it under a duty to safeguard and promote her welfare. L did not attend school at all from the spring term of Year 6, when she was 11, and has had no experience of Secondary School. In her own words she complains:
 - i. *Why did Children's Services place me with my mother when they knew that she was so violent? They always used to come with two people to see us as they were scared but yet they left little kids with her.*
 - ii. *Why was nothing done about my education? I did not go to school after Primary School. I wanted to go, I did. When I was at school I was in the top for Maths and English. I think Children's Services will say lack of communication but they should have tried harder.*
2. The Council dealt with these complaints through the statutory complaints process with a manager from its Children's Safeguarding Unit acting as the Independent Investigating Officer (IIO) assisted by an external Independent Person. L was not satisfied with the outcome and complained to me. She was assisted by the National Youth Advocacy Service¹ and I want to take this opportunity to record my appreciation of the highly professional and helpful way that L's advocate has communicated with my office.
3. L feels that the IIO's report on her complaints was wrong to suggest that her wishes and feelings were taken into account whilst she was in the Council's care:

"How can they say they know what I wanted when I was only seeing someone every year or so and they were always changing...I could not say get me out of Mum's house because of what she would do to me. And she would not let me go back to school. They normally only spoke to me in front of my Mum anyway. What was I supposed to say in front of her? It took me two or three months to speak properly with [Leaving Care Worker].

They are making it seem like they were being good to me, listening to me and allowing me not to go to school. I wanted to go to school. How was I going to be a lawyer or a police officer if I did not go to school?"

¹ The National Youth Advocacy Service (NYAS) is a UK charity providing information, advice, advocacy and legal representation to children and young people up to the age of 25, through a network of advocates throughout England and Wales

The law and the Local Government Ombudsman

4. At the time that L complained to me Section 26(4) of the Local Government Act said I should not investigate a matter if the person affected has not complained within 12 months of knowing of it - unless I considered it reasonable to investigate. I decided that it was reasonable to investigate L's complaints because she was a child throughout the events concerned and would not have been able to make judgements about what was happening to her or know how to complain.
5. Section 26(8) and paragraph 1 of Schedule 5 of the Act says that the Local Government Ombudsman shall not investigate "*The commencement or conduct of civil or criminal proceedings before any court of law*". L was subject to Care Proceedings in the County Court. Those proceedings and the judgements made by the Court are outside my jurisdiction and I have not investigated them nor do I make any comment about them. The proceedings of the Court are confidential and I am grateful to the Court for allowing me to include some material in order to give a complete summary of the background and issues in this complaint.

Reorganisation of local government in Cheshire

6. The Cheshire County Council ceased to exist on 31 March 2009. Of the two successor Councils, it falls to Cheshire East as the Council for the area where L lived at the time to deal with and respond to this report. I am grateful to the officers of Cheshire County Council for their co-operation in the investigation and particularly to the Solicitor who dealt with us in the latter stages. As my investigation found serious maladministration causing injustice to L, I am asking both successor Councils to consider my findings and recommendations relating to child protection services.

Background

7. When L was aged 2 – 8 years old her father had a residence order for the children who were looked after by various friends and members of the family. They then went to live with their mother who, soon after, rejected the eldest child who became subject to a Care Order and never went back to live with his mother and sisters.
8. Between January 1998 and January 2002 when she was aged 9½ to 12½, L was:
 - taken into voluntary care and placed with foster parents on five occasions – twice when her mother was compulsorily detained in hospital under the Mental Health Act and once when her mother was arrested for criminal damage;

- arrested twice – once after she and her sister were caught stealing and once when they were reported for causing criminal damage. Apparently both these incidents were at their mother's instigation;
 - subject of neighbour and anonymous calls to Children's Services saying that the sisters were being abused and assaulted by their mother;
 - absent from school from Easter 2000 (when she was 10³/₄);
 - unable to live in the family home for three, separate periods – after her mother had wrecked it when suffering severe delusions about dead bodies being hidden; after it was badly damaged by fire; and after her mother painted the entire outside pink, smashed the kitchen and pulled plaster off the walls during a dispute over re-housing.
9. The Council's records show that when L and her sister were first in voluntary care they spoke of: not being allowed out of the house, being threatened with violence by their mother, seeing her self-harm, and being aware of drug paraphernalia in the house. They had bald patches on their heads and said their mother had pulled their hair out.
10. During these two years (January 1998 – 2000) it appears that L and her sister were on the Child Protection Register for some seven months between May 1998 and November 1998. When they were taken off the child protection register it was noted that L was attending and doing well at school - in one of the top groups for literacy and the middle group for maths. Two months later her elder sister was not attending school, their mother was refusing to let Council staff into the home and had attacked a social worker.
11. From January 1998 L's mother began to keep her away from school. In June 2000, when L was almost 11, her primary school reported to the Education Welfare Service that she had not attended since the Easter. L's mother did not register her at a secondary school for the following term. Education Welfare involved Children's Services and the case was allocated to a Social Worker. The records show that both L and her sister wanted to go to school but were prevented by their mother who said she wanted them to attend a different school that was full.
12. In the autumn of 2001 when L and her sister were living at a variety of addresses following the house fire, the Council decided to apply to the Court for an Assessment Order to enable it to gain access to the children, assess their circumstances, and get them back into the education system. The children's father had not had contact with the sisters and had been in prison since sometime in 2000.

13. The Guardian appointed for the children by the Court considered that an Assessment Order was inadequate in the circumstances and recommended an Interim Supervision Order that the Court granted in January 2002. This gave the Council the duty to: *'advise, assist and befriend'* L; take any steps needed to give effect to the Order; and go back to the Court if the Order was not complied with or was no longer necessary.
14. L and her sister did not attend the medical appointments arranged for them after the Court awarded the Interim Supervision Order. On the Guardian's recommendation, this was changed to an Interim Care Order in March 2002 and the case transferred from the Magistrates' to the County Court. The Court directed the Council to provide details of its plans for the sisters and to identify possible suitable placements for them in residential education. The report produced in response stated that:
 - the Education Welfare Service had not fulfilled its promise to provide a list of residential education establishments;
 - it was likely that the girls would need Statements of Special Educational Needs to access such provision;
 - two possible placements had been identified for L but cautioned that other pupils may have serious behavioural problems, be extremely disturbed, have criminal offending histories or have substance dependencies;
 - the view of Council senior officers was that it would not be appropriate to forcibly remove the sisters because of concerns about *'the physical and emotional impact'* on them, the risk of them absconding, and *'...concern about the detrimental effect such action may have on [their mother's] mental health.'*
15. The Guardian considered that an Interim Care Order was required because L's mother had not co-operated with the Supervision Order. Up to February 2003 the Court made monthly Interim Care Orders that were not contested by L's mother. It also made various directions about reports and information that it wanted to see and excused the parties from attending Court from September 2002 to January 2003.
16. A Care Plan for L was produced in April 2002. Its aim was to *'...support L to remain at home with her mother and sister through the provision of support services'*. It said:

'A further period of assessment is required in order to determine whether [L's mother] is willing to cooperate with social services and education staff so that [L's] needs are met and she receives an appropriate education'

and

'...it is important that significant progress is achieved in relation to [L's] educational needs being appropriately met if placement with the mother is to remain a viable option'.

17. L and her sister started tuition at the local library for five hours a week from April 2002 and a community support team worker began to support them. The community support worker recorded that L had asked for home-work and, later, *'It is becoming clear that L could rejoin school she is bright and eager to learn'*. L's Care Plan records that all professional workers should monitor her well-being and report any concerns, and that a Personal Education Plan should be produced as soon as possible.
18. In May, L's sister asked to be taken into voluntary care because of her mother's violence and her very difficult home situation. She told the Social Worker that she believed L was her mother's favourite and would be safe at home. L's father was consulted and supported this view. L then lived alone with her mother.
19. L's Care Plan was revised in June 2002 for one of the Court hearings. It recorded *'...discussions in relation to [L's] reintegration into school are only in the preliminary stage, however, [L's] mother has so far expressed an unwillingness to consider this possibility...'* and *'...individual tuition is considered appropriate only in the short term and the aim remains for [L] to be reintegrated into school.'* The case was allocated to Social Worker 2 because of illness.
20. A Looked After Child (LAC) review meeting was held in August 2002 (when L was 13) and noted that the review was overdue because of *'...the difficulties in allocating a Social Worker...in view of the number of vacancies within the locality.'*
21. From September 2002 the Council increased L's tuition at the local library to ten hours a week.
22. A further revised Care Plan was produced in December 2002 for the Court. This stated that L's mother *"...has cooperated with education in ensuring that [L] attends for her 10 hours weekly. She is not willing to cooperate with any plans for [L] to return to school. [L] is not willing to consider returning to school. Education's view is that at the present the issue of [L's] return to school should not be forced. Social Services are in agreement with this and plan to continue pursuing school attendance..."*. It recorded that:
 - L continued to live with her mother who had co-operated in ensuring that L attended for ten hours tuition a week but both she and L were not willing for L to return to school;
 - the Education Service did not want *'at present'* to force the issue of L returning to school;

- L appeared to be physically well cared for and the condition of the house was much improved;
 - L wanted to remain at home and *'...to resume her education, expressing an ambition to pursue a career in the police force or as a lawyer and does not want to return to school. At this point Education and Social Services are receptive to [L's] wishes and are not pursuing a return to school...It is proposed that [L's] education will continue to take the form of individual tuition. Reintegration into school will continue to be pursued...'*;
 - L was 'Gillick competent' (i.e. had sufficient understanding and intelligence to understand and accept or reject medical care or treatment) and had refused to be medically examined;
 - the Council would monitor L's home situation and consider removing her if:
 - her mother did not co-operate with L's education plan or with any issues relating to L's health and essential medical appointments;
 - there was evidence that her mother's mental health was deteriorating to the point that L was 'at risk';
 - there was evidence of 'significant' domestic violence or emotional abuse of L;
 - L wanted to leave.
23. L's community support worker recorded in January 2003 *"I attended a professionals meeting...and had a good amount of input to my views around L and her wants, needs, behaviours and understanding of the situation. I was not welcomed at the meeting and initially told I should not be there. However, the Guardian welcomed my input..."*
24. The Court made a full Care Order for L in February 2003 (when L was a little over 13^{1/2}). L and her mother were represented by different solicitors.
25. The proceedings of the Court are confidential and I am grateful that the Court has allowed me to have access to the Guardian's report and to refer to some of the content.
26. The Guardian's report to the Court records that from February 2002, L's mother had refused to co-operate with him, L had refused meet him and would only communicate through her solicitor. He comments that:
- the girls *'...have experienced a lengthy history of psychologically unstable parenting and emotional neglect...'*;

- *'chronic non school attendance' is primary evidence of significant harm;*
 - *their mother's actions '...appear to have no appreciation of the social and intellectual impairment and the psychological harm the children have suffered as a result of not being allowed to attend full time education...';*
 - *her mother's continuing refusal to allow L to go to school '...and her inability to appreciate the harm this is causing, further emphasises the current high level of significant harm and the high risk of future significant harm resulting from [the mother's] neglectful and inappropriate parenting...'*
 - *based on the '...case history of inconsistent and unstable care..' the reported attachment between L and her mother '...is likely to be a psychologically insecure attachment that is unlikely to afford sufficient security to support [L's] transition into adulthood...'*
 - *the degree of risk posed by the mother's non-co-operation meant that it should be made clear that any failure to co-operate and to fully promote plans for L's education would lead to L being removed from her mother;*
 - *observations indicated that L currently had adequate standards of physical care and nutrition; home conditions were safe and appropriate to her needs; and her mother's mental health had been relatively stable.*
27. In giving his assessment of the Council's involvement with L and of her Care Plan, the Guardian records:
- *concerns about why it had taken so long for the Council to seek to protect the sisters given '...the lengthy history of evidence of domestic violence, mental instability and emotional neglect...';*
 - *his opinion that the Council's failure to seek Care Orders for the girls in 1999 (when it did so for their brother) had contributed to the significant harm that they had suffered;*
 - *in the early stages of the proceedings he was concerned that the Council was avoiding seeking parental responsibility and had failed to take appropriate account of the harm associated with the sisters' prolonged non-school attendance and emotional harm associated with the instability of their mother's mental health and disturbed personality;*
 - *that it was appropriate for L's Care Plan to record the circumstances under which she would be removed from her mother;*

- his concerns that the Council might be deterred from acting on this for fear that L's mother would harm herself and that this would cause further harm to L *'This risk is present whatever action the Authority takes and failure to progress [L's] education needs has equal consequences in terms of long-term significant harm.*
28. The Guardian concluded that a full Care Order would be the only order *'...capable of providing appropriate statutory protection...'* for L.
29. At about the time the Care Order was made the community support worker who had worked with L for almost a year withdrew because she did not feel safe after being threatened by L's sister. She was not replaced.
30. A report to a Looked After Child (LAC) review meeting² held in March 2003 says that L's tuition was going well and she should be able to take some GCSEs. The notes of the meeting include that:
- *'The purpose of the Care Order...is to provide additional parental responsibility support to [L] at times when her Mum...is not able to do so as a consequence of her own difficulties...';*
 - there was no Personal Education Plan³ and the Social Worker should liaise with the tutor to complete one;
 - L had refused to have a medical examination and this was her Social Worker's *'...main area of concern...currently...particularly as [the community outreach worker] has informed him that she has observed [L] with a limp on occasions'.*
31. The Chair also commented that she had not met L or seen any independent review of her views and would try to meet her before the next LAC review.
32. In June L's mother made a formal (and totally unfounded) complaint about Social Worker 2.
33. The next LAC Review was in September 2003 (when L was 14^{1/4}), it is not clear who attended this meeting, and the only signed record is that of L's Social Worker 2. He reported that L was attending ten hours of tuition but would not meet him. The notes record that L had a Personal Education Plan dated June 2003 and that Social Worker 2 was to liaise with colleague to ensure that L received Connexions⁴ advice.

2 See Appendix 1 paras 99-100 for explanation

3 See Appendix 1 paras 104-105 for explanation

4 At the time Connexions was a statutory organisation providing information, advice and support to young

34. A 'Legal Gate-keeping Meeting' was held in October 2003. Social Worker 2 reported that L had stopped co-operating with tuition and, although she still attended daily, was awkward, hostile and doing as little work as possible. The tutor was not willing to continue. The Independent Investigating Officer's report on L's complaints states that this meeting felt that police assistance would be needed to remove L from her mother's care, there was no guarantee that L would stay in any other placement and the meeting decided not to remove L from her mother's care. The notes that I have seen do not record these points but it is clear that the meeting assumed that L should remain with her mother. It was agreed that Connexions should be asked to provide a Personal Advisor for L, enquiries should be made to find out if L had been involved in a robbery, and a letter should be sent to her mother reminding her that she needed to co-operate or the Care Order might be revoked.
35. In view of the complaint that L's mother had made about Social Worker 2 he was told in October 2003 that he should no longer work with the sisters. L was not allocated a new social worker until May 2004.
36. At the LAC review in January 2004 (when L was a little over 14^{1/2}), it was noted that there was still no cooperation with L's Social Worker who was confident that L would say if she did not want to live at home. It appears that this was Social Worker 2 but this is not entirely clear. The basis for such confidence is not recorded. It was agreed to allocate a new social worker. The tutor had changed as L was now refusing to work with the previous one. There is no mention of a Personal Education Plan.
37. In March 2004 the second tutor withdrew following threats from L's mother. A LAC review in May 2004 found that L had not yet been allocated to a Social Worker and no action had been taken since November 2003.
38. A 'Professionals Meeting' was held on 1 July 2004 involving Social Worker 3, her temporary team manager, a Connexions Worker, a Senior Education Welfare Officer, and a Teacher from the Children In Care Support & Development Team. The notes record the Teacher as highlighting that L *'...has not been seen, she is on a Care Order and she needs an education. He has offered to visit [L] at home, but this was declined by the Education Department...'* It was agreed that L's interest in work experience should be supported by Connexions.
39. A LAC review later that month (when L was 15) noted that there had been no tuition since March 2004. Social Worker 3 and a Connexions Worker had visited L who had asked for more tuition and this would start in September 2004. There is no mention of a Personal Education Plan.

40. The Council's files contain e-mails dated November 2004 from the Teacher to colleagues noting that L's mother was refusing to allow her to participate in the alternative tuition/Connexions package and asking for a meeting as a matter of urgency '*...we should not allow this to drift on any longer...*' He was supported by the Senior Education Welfare Officer who expressed concern that an agreed plan of action '*...has been totally scuppered because of [L's mother's] lack of co-operation. Once again...preventing [L] receiving any education or support...*'

41. One of the Teacher's e-mails says:

'[L] being a LAC, year 11, who has never had a place or attended secondary school is in a unique situation.

I have never met birth mother or [L] because social services colleagues judgement has been that their relationship with mother is so fragile that any other professional worker having direct contact ...could further jeopardise the service relationship...

As it is so many months since any professional worker has been able to ...check [L's] wishes and feelings we don't really understand what meaning she gives to her very abnormal life.

It feels uncomfortable that she is held hostage by her mother's personality disorder.

Also that social services colleagues have very little influence re her daily care and thus the only speculation can be that [L's] needs nearly always come second to her mother's...

Sometimes we have to provoke change even though we are uncertain of the outcome especially if the evidence re her present care is damning in some respects and unknown in others.

I worry, even though I never met her, of the impact on [L's] emotional and social well being and future life chances of her caring for her mother and having no access to any educational service or activity.

I would just like to meet her to reassure myself that though the situation for her is very tough, she is making an informed consent that the life she is leading is one she prefers...'

42. A LAC review in January 2005 noted that L was not attending tuition and had not been seen by a Social Worker since the last review six months before but had been seen by a Connexions worker. There is no evidence of any action being taken in response to the concerns of the Teacher and Senior Education Worker. The meeting noted that L's 2003 Care Plan needed to be updated and agreed that L's Social Worker 3 and Team Manager should return to 'Legal Gatekeeping'

with updated information since 2004, and that the Social Worker should refer L to the 'pathway planning process' and outline all the attempts that were being made to communicate with L and promote her health and training needs. A Connexions worker was recorded as having a positive relationship with L and her mother, seeing L regularly, and reporting no concerns about L who was always clean and appropriately dressed.

43. By June 2005, L had reached school leaving age and a LAC review meeting once again stated she had not been seen by Children's Services staff although Connexions were involved.
44. A pathway planning meeting was held in October 2005 (when L was 16¹/₄ and beyond the age of compulsory education). It records that:
 - L's home was not in a habitable state and that she and her mother were in fear of violence from L's brother who was due to be released from prison;
 - L worried about where she would go if her mother were admitted to hospital;
 - the state of the house meant L could not practice her independence skills and needed to develop skills and knowledge of domestic chores, shopping, managing a budget etc;
 - L was eligible for support from the Leaving Care Service until she was 21 and this would be lost if the Council successfully applied to discharge the Care Order;
 - L would need separate legal advice if the Council decided to apply to discharge the Care Order.
45. A report dated December 2005 to a 'Legal Gatekeeping Meeting' held in January 2006 recorded that the Council '*... has been unable to discharge its statutory responsibilities to any useful degree in terms of the Care Order...*' and that L's mother was not in favour of it being revoked '*...because of the apparent duty to provide financial assistance.* It noted that:
 - L and her mother wanted to move because the area they lived in was run-down and they feared violence from L's brother when he was released from prison;
 - L and her mother had attended a Pathway Planning Meeting in October 2005 but would not co-operate with the Leaving Care Team;
 - L could be assessed as a Young Carer but would not co-operate;
 - '*...there are concerns about [L's] emotional health and the impact that her mother's mental ill health is having on her opportunities to do things and*

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experience things that other young people of her age do. The family are always chronically short of money and ask for assistance from the Section 17 budget on a regular basis...'

- L's work placement at a stables had been lost;
 - L '*...appears to be held hostage to her mothers needs... There is little access as to what home life is like...*'
46. There is an undated LAC review document that seems to have been discussed at a meeting in May 2006. That report and the meeting noted:
- L and her mother had moved house and had not been visited in their new home;
 - a decision was made to apply to discharge the Care Order as the lack of contact was '*...felt to be deliberate on the family's part and a message that they no longer need a social worker to help them get on with their lives..*';
 - L had not engaged with Connexions and was of school leaving age so there was no Personal Education Plan for her;
 - '*There are concerns that [L] has not really done much in terms of taking up offers of support available to her so that there are health and education/employment needs still outstanding. However, without [L's] co-operation there is little that can be done about this...even if the care order is discharged...her leaving care worker will still have statutory involvement with her for six months beyond any discharge date for as long as [L] remains at home...*'
47. Information provided by L shows that from March 2005 she worked with Connexions on job searches and organised a placement from July to November 2005 that ended when her mother prevented her from attending. In December 2006 she found herself a job at a stables, asked Connexions for advice about taking GCSEs, attended all appointments made with her together with a 'Move On' course, applied for a job at a Veterinary Hospital, and completed a Prince's Trust Award.
48. In August 2007, L through her Advocate, complained to the Council. The Council dealt with her complaints through the statutory complaints process with a manager from its Children's Safeguarding Unit acting as the Independent Investigating Officer (IIO) assisted by an external Independent Person.
49. The IIO focussed on whether Social Services had followed their own policies and procedures and behaved 'reasonably' in the circumstances and who made decisions and why. She recorded that it was important to judge the actions and

decisions in the context of what was known and the legal and social policy context at the time. Her report included comment that:

- a more systematic approach to assessment and care planning during L's early childhood might have led sooner to an application to the Court to remove L from her mother's care;
 - once L was old enough to express her wishes the Council had to balance her right to be protected from harm with her right to a family life and to influence critical decisions about her living arrangements;
 - the plans for L to live with her mother and have tuition were agreed by the Court;
 - parents have a legal duty to ensure that their children are educated and the Council has a legal duty to intervene if a parent fails to do this;
 - the Council did intervene – on one level too little, too late, and the ten hours tuition resulting from the care proceedings were ultimately inadequate to help L to reach her hopes and expectations;
 - practice had changed over the ten years since L was first put on the child protection register with now greater awareness on the impact of domestic violence and parental mental health on children's emotional well being;
 - the statutory LAC review process would identify if an officer felt that a child's needs were not being met;
 - the law now required the Council to provide 25 hours of tuition to children who were not in school.
50. The IIO recommended that officers should be creative in looking at the best way to provide L with accommodation; L should receive financial support for remedial education and be able to access the 'Leaving Care' service until she is 25.
51. A very senior manager in Children's Social Care considered the IIO's report and wrote to L saying:

"...it is clear that there was a lot of involvement and action by Social Services and that Social Workers appeared to be following policies and procedures. Many of the plans and actions were agreed by the courts and through child protection conferences. It is also clear that your own views were an important factor in what happened..."

...you received ten hours tuition a week, this was actually above the minimum level of education which was legally required at the time for someone who was out of school. The legal minimum was 5 hours per

week. It was also...more than had happened before you came into care...Since you reached compulsory school leaving age you have been offered a number of opportunities to engage in alternative education provision but you have not taken full advantage of what has been offered".

52. L was not satisfied with the outcome and complained to me. She feels that:
- her complaint about being left, largely unsupervised, with her volatile and violent mother was not properly considered;
 - it was wrong when deciding in 2002 that she would be safe with her mother to rely on the views expressed by her father and sister (*'Of course [sister] would say I was Mum's favourite. That is what kids do...I can't believe they would take that kind of information from a 14 year old seriously.'*);
 - her complaint about education was not answered – she had complained about not being enabled to attend school not that she had not received the minimum statutory entitlement to education;
 - comments about her wishes and feelings took no account of her circumstances of rarely being seen by social workers and then in the presence of her mother;
 - no account had been taken of the way she had worked with Connexions and the initiative that she had shown in pursuing jobs and courses.

Legal and Administrative Background

53. The law, regulations, guidance and policy relevant to L's complaint are set out in Appendix 1.

Ombudsman's findings

54. I am not able to decide whether the Council acted with maladministration by not seeking a Care Order and/or to remove L and her siblings from their mother's care before 2000. Judged with the benefit of hindsight, the decisions not to intervene more effectively seem difficult to comprehend but it is not practicable, after so many years have passed, to identify specific failures to apply the law, regulations, guidance, policy, or procedures.
55. Once L was in her early teens her situation posed a considerable challenge for the Council. There is a strong presumption towards children being brought up by their families, there is evidence that L said she wanted to remain with her mother, and even her Court-appointed Guardian could not establish communication with her. It is clear from the papers that the Court has given me permission to see and use, that in March 2003 the Guardian, who was very critical of the Council and

strongly recommended the Court to grant a Care Order, reluctantly concluded that the best option was to place L with her mother - subject to the conditions set out in the Care Plan.

56. After the Court made the first Interim Care Order in February 2002 the Council had parental responsibility for L and a specific duty to promote her welfare as well as its general duty to comply with the law, regulations, statutory and other guidance – see Appendix 1. As is clear from the account of events set out above, the Council failed, comprehensively and spectacularly, to fulfill its parental responsibility for L or to promote her welfare - this is the over-arching maladministration in this case.
57. L's needs were never assessed in accordance with the 2000 statutory guidance 'Framework for the Assessment of Children in Need' (see Appendix 1 paras 96-97). The County Council said that the National Assessment Framework came into effect in June 2000 and was still being 'rolled out' in Cheshire during the following year. I do not accept that this gives any justification for the County Council's failure. L was placed in the County Council's care in 2002 and the guidance makes it clear that assessments should not be a 'one-off', initial activity. The County Council's failure to properly assess L's needs throughout the 6+ years that she was in its care was maladministration.
58. The effect of the Care Order was to give the County Council parental responsibility for L and the power to determine the extent to which L's mother may meet her parental responsibility for L (see Appendix 1 para 98). The first Looked After Child Review after the Court granted a full Care Order to the Council is recorded as noting that the purpose of the Care Order was '*...to provide additional parental responsibility support [L] when her mum...is not able to do so...*' This seems to me to be a fundamentally flawed interpretation of the law and a probable reason for the County Council's failures and maladministration.
59. Although there are numerous references in the County Council's documents to L being with her mother under the Placement with Parents Regulations (see Appendix 1 paras 101-103), the County Council has been unable to produce the written and signed agreement with her mother that the Regulations require. The County Council says that one was probably not produced because it was believed that L's mother would not sign it. The Regulations state categorically that a child should not be placed '*...unless and until such an agreement...*' has been reached and recorded in writing. The County Council acted with maladministration in placing L with her mother without complying with the Placement with Parents Regulations. Its apparent belief that L's mother would not agree should have caused the County Council to realise that it was in breach of the law by making the placement and to question the wisdom of doing so.
60. The Placement with Parents Regulations required the County Council to visit L within a week of being placed with her mother (i.e. within a week of the decision to

place her there after the first Interim Care Order in February 2002), at least every six weeks until March 2003 and then at least every 3 months. The first record I have seen of a social worker's contact with L is Social Worker 2's introductory meeting with her and her mother in the library in mid-June 2002. Between July 2002 and November 2003 there are records of 11 contacts, six were home visits at which L was seen with her mother. There is only one record of Social Worker 2 seeing L alone - this was when he went to the Library. From September 2003 Social Worker 2 expressed concerns that he was not able to fulfill his duties toward L.

61. L's case was not allocated to a Social Worker from November 2003 to May 2004.
62. The community support worker saw L in late April and early May 2002 and regularly between September and December 2002 but stopped working with her in February 2003.
63. The County Council failed to see L alone and to satisfy itself that her welfare was appropriately provided for by the placement with her mother. This was maladministration. Although Social Worker 2 made it clear that he was unable to fulfill his statutory duties, there is no evidence that more senior officers realised that this meant that L's placement with her mother was in breach of the law or took effective action to remedy the situation⁵.
64. I am astounded that this breach of the law was not identified when the case was referred to a 'Legal Gatekeeping Meeting' in October 2003. One outcome of that meeting was to consider revoking the Care Order i.e. returning parental responsibility for L to her mother. It is impossible to comprehend how this could be seen as compatible with the County Council's general and specific duties to safeguard L and promote her welfare. The County Council failed to give proper consideration at this meeting to all the relevant issues and failed to take immediate steps to comply with the law. This was maladministration.
65. The County Council came close to complying with the statutory requirement to hold LAC reviews every six months (see Appendix 1 paras 99-100). However, it complied in form rather than substance. The same issues were raised at each review and then allowed to drift. The impression given by the review documents is of purposeless paperwork and ineffectual 'going through the motions'. Despite recording clear cause for grave concerns, the Looked After Child (LAC) reviews did not result in any sustained action being taken to safeguard L and promote her welfare. This was maladministration.
66. The records of the LAC reviews are not in particularly good order – dates on cover sheets do not tie-in with dates in the main body, only one document is

⁵ I do not consider that referring the matter to the ineffectual 'Legal Gatekeeping Meeting' amounts to effective action

signed, boxes to record who was invited and who attended are blank with attendance recorded in the notes. I asked the County Council to provide me with copies of the notes taken by Social Worker 2 on visits that are listed in the LAC review documents. It was unable to do so and said that the Social Worker queried whether I had quoted the dates accurately. On further checking the County Council was unable to locate records of any visits / meetings on the dates noted in its records. Although this failure to comply maintain complete and accurate records seems less significant than many of the County Council's other failures in this case, it was also maladministration and indicative of a lack of care and rigour.

67. After each LAC Review monitoring and forms were completed by the Chair (later called Independent Reviewing Officer). There are ten monitoring forms. All record that L had not had a health needs assessment and that nothing was known about her dental health, all but one record that nothing was known about her immunisations, eight record that L had not contributed her views to the Review, three record that there were resource deficiencies, and only three record that the form completed by the Social Worker was available before the Review meeting.
68. When asked about the purpose of these forms, the County Council said it was to enable aggregated information to be fed back to management and into annual government returns. The form would be used to gather information on the quality of documentation available, the forms used, and to inform the self-monitoring of standards which in turn would inform the performance assurance service. The County Council said that the management team would use the information to highlight areas that needed further work and any issues about the individual child would be addressed at the review meeting.
69. L's case provides a vivid illustration of how ineffective these forms were in assisting the County Council to ensure that it was adequately safeguarding and promoting the welfare of a child in its care. I have seen no evidence* to indicate that the County Council's officers paid any regard to the information recorded on these forms and or had any system for monitoring and responding to issues identified. This was maladministration.
70. Statutory guidance in 'Education of young people in public care' issued in 2000 (see Appendix 1 para 104) makes it clear that, as a child in the Council's care, L should have had a full-time place at a local mainstream school. There was nothing about L's circumstances that made such provision 'unsuitable' for her – all the evidence was that she had the necessary intellectual capacity. There is no evidence that the County Council officers responsible for safeguarding L and promoting her welfare were aware of this Guidance, and the County Council signally failed to make sustained and significant efforts to comply with it. This was maladministration.

71. I am concerned to note that as late as March 2008 the very senior manager responding to the IIOs report on L's complaint believed that the Council was only required at the time to provide L with five hours tuition per week. This indicates a woefully inadequate understanding of the Council's statutory duties to L.
72. L did not attend school from Easter 2000 and the County Council took no action to use its powers as Local Education Authority to either secure her attendance or ensure that she was receiving a suitable⁶ education by other means (see Appendix 1 paras 87-93). L had missed four entire school terms by the time that Children's Services decided to apply to Court for an Assessment Order in autumn 2001. L's circumstances meant that co-operation between County Council Departments was necessary and that it was appropriate for Children's Services to take precedence. There is no evidence that Children's Services paid proper regard to the importance of L's loss of education or developed any plan to deal with the situation. I have seen no evidence that until July 2004 (when L was 15), the Education Service made any efforts to influence or require Children's Services to act. The County Council's failure to take effective action after L's absence from school was reported by her Primary School in June 2000 was maladministration.
73. The County Council accepted that a Personal Education Plan (PEP) (see Appendix 1 paras 104-105) was never produced for L - despite numerous references in the LAC review documents to the need for her to have one (and a reference to one having been produced). The County Council's failed to comply with the statutory guidance (in force from 2000) that every young person in care should have a PEP. This was maladministration.
74. L had no tuition and so no form of education from March to September 2004 whilst she was in the County Council's care. It was maladministration for the Council to allow this to happen and its failure is all the more serious because L was in its care.
75. The County Council appears to have complied with the legislation and regulations that applied to L as a child leaving care.
76. I have grave reservations about whether the IIO appointed to investigate L's complaints at Stage 2 of the statutory complaints procedure was sufficiently independent of the Department's management to be able to form an impartial and critically reflective view of the issues. The IIO's report show no awareness of any of the serious failures to comply with regulations and guidance identified in this Report, although she explicitly stated that she would focus on whether policies and procedures had been followed.

6 I do not consider tuition for ten hours a week to be 'suitable' for a bright intellectually capable child

77. The very Senior Officer's response to L was, at best, unfortunate albeit that it was informed by a report from the IIO that did not address the key issues thoroughly. I am not prepared to go as far as saying that the Stage 2 investigation report and response were maladministration but I do urge officers to reflect on both the missed opportunity and the negative impact on L of the clear implication that she was held responsible for what happened to her whilst she was a child in the County Council's care.
78. In responding to a draft of this report, L's advocate said, on her behalf,: *'During the course of this complaint, there were many occasions in which L felt that the adults involved in responding to her complaint were not listening to her. Indeed, at times L felt that the more she persevered with her complaint, the more she was being held responsible for the extreme difficulties in her everyday life. This feeling was often unmanageable for L and caused her difficulties in her everyday life. There were very many occasions in which L 'thought about giving up'....Receiving the report by the IIO and attending the meeting in which the IIO outlined her findings marked the most difficult period during this complaint for L. This difficulty was magnified by the very senior manager in Cheshire Social Services' response to L'.*

Injustice

79. As a consequence of the County Council's maladministration L did not attend school from Easter of her last year in primary school until she reached school leaving age. For significant periods she received no education and, at best, had ten hours personal tuition a week at her local library. Once L was old enough to assert her independence from her mother she made tremendous efforts to establish a career and prove herself. Her willingness and ability to do this despite her difficult childhood and adolescence is a tribute to her character, intelligence and capability. It also serves as an illustration of her potential that should humble those professionals who accepted her disrupted and inadequate educational provision as sufficient for a child in their care.
80. There can be no doubt that L was and is capable of achieving a level of education and qualifications that could make a very significant difference to her earning potential. She is succeeding in her current chosen career but it is not secure and at some future point she is likely to have to explore alternatives. Her lack of education and qualifications may then be a major disadvantage for her. The injustice caused to L by the County Council's maladministration is long-term and enduring.

Remedy

81. The County Council recognised the consequences of its failures and acted on the recommendations for the Stage 2 reports that L should:

- have access to leaving care services until she is 25;
- receive financial support to undertake remedial education;
- receive 'creative' help with appropriate accommodation.

In response to a draft of this report, the Chief Executive of Cheshire East Council has assured me that the concerns and findings raised by this report are being taken seriously and that she will advise Councillors to accept my recommendations. I am encouraged by that response.

82. I recommend that Cheshire East Council, as successor to Cheshire County Council should:

- arrange for a very senior representative to meet with L and apologise to her for the maladministration that blighted Cheshire County Council's care of her;
- pay her £1,500 to reflect her time and trouble in pursuing her complaint and her distress caused by Cheshire County Council's response to her complaint;
- make £45,000 available either for immediate investment in purchasing a home (by a shared ownership scheme if necessary) or to be held in an interest-bearing account and released to her when she is 30 years of age or in equal annual thirds when she embarks on and maintains a programme of education leading to qualifications – which ever is the sooner.

83. I also recommend that both successor Councils should consider this report and review their newly established services to children to ensure that:

- adequate resources have been made available to employ sufficient trained and experienced staff;
- all appropriate staff are aware of and properly trained to comply with the requirements created by the law, regulations and guidance;
- effective supervision arrangements are in place;
- information gathered for monitoring purposes is regularly reviewed so that issues of concern are identified and reported to senior managers and an appropriate body of elected Councillors.

Having received and considered L's response to my draft report, I make a further recommendation that a senior representative of Cheshire East Council's Children's Services should meet with L and draw up with her a detailed plan that outlines how she will have access to leaving care services until she is 25; receive

financial support to undertake remedial education; and receive 'creative' help with appropriate accommodation.

Conclusion

84. As noted above, there can be no doubt that the combination of L's circumstances, age and apparent attitude posed a major challenge for the County Council. There is a presumption towards children being raised in their own families and it appears that there were grounds to believe that this was L's wish. However, L's good relationships with her community support worker, Connexions worker and, eventually, her leaving care worker are a very strong indication that it was possible to 'reach' and influence her.
85. The strong impression created by the documents that I have seen is that the difficulties of dealing with L's mother and L's age meant L was effectively 'written off' by the social work staff who dealt with her case. L had five social workers between early 2002 and July 2005. There are strong indications that the Council did not have enough social workers available. The documents that I have seen contain no evidence that the people with parental responsibility for safeguarding L and for promoting her welfare: understood the duties and requirements created by law, regulations and statutory guidance; felt compelled to comply; or had any effective route for any concerns they had about failures to do so.

Post script

86. In response to a draft of this report, L's advocate said, on her behalf:

'L has many ambitions for the future. Whilst she enjoys her current work L does not want 'to be stuck in a dead end job'. She would like to attend University and gain a degree. L is beginning to develop a fragile confidence in her potential and has begun to make plans to remedy her lack of education.'



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23 June 2009

Appendix 1

The relevant law, regulations, and statutory guidance.

School attendance

87. Section 7 of the Education Act 1996 says:

'The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—

(a) to his age, ability and aptitude, and

(b) to any special educational needs he may have,

either by regular attendance at school or otherwise.'

88. Section 437 gives the Council the power to make a school attendance orders

'(1) If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise....'

89. Section 443 makes it an offence not to comply with an attendance order.

90. Section 444 says:

'(1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.'

91. Section 447 requires that:

'(1) Before instituting proceedings for an offence under section 443 or 444, a local education authority shall consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order with respect to the child.'

92. Section 36(6) of the 1989 Children Act says:

'An education supervision order may not be made with respect to a child who is in the care of a local authority.'

93. In 1999 the Government issued a Circular informing authorities that pupils excluded from schools should receive between 21 – 25 hours of education per week.

General responsibilities to children

94. Section 17(1) of the Children Act 1989 says that it is:

'...the general duty of every local authority:

- (a) to safeguard and promote the welfare of children within their area who are in need; and*
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.'*

95. Section 22 of that Act sets out the 'General duty of local authority in relation to children looked after by them' as:

(1) ...a child who is looked after by a local authority is ...a child who is—

(a) in their care; or ...

(3) It shall be the duty of a local authority looking after any child—

(a) to safeguard and promote his welfare; and

(b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

(a) the child;

(b) his parents;

(c) any person who is not a parent of his but who has parental responsibility for him; and

(d) any other person whose wishes and feelings the authority consider to be relevant,

regarding the matter to be decided.

(5) In making any such decision a local authority shall give due consideration—

(a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;

(b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and ...

96. Statutory guidance⁷ issued in 2000 'Framework for the Assessment of Children in Need' stresses that safeguarding children has two elements – protecting a child from maltreatment and preventing impairment – and that safeguarding children should not be seen as a separate activity from promoting their welfare which is about '*...creating opportunities to enable children to have optimum life chances in adulthood, as well as ensuring they are growing up in circumstances consistent with the provision of safe and effective care.*'

97. The Guidance states that:

- assessments should take account of three domains: the child's developmental needs; the parents' or caregivers' capacities to respond appropriately; wider family and environmental factors;
- the domain of a child's development needs includes health, education, emotional behavioural development, identity, family and social relationships, social presentation, self care skills;
- assessments should continue throughout a period of intervention.

Care Orders

98. Once the Court made a Care Order for L, under the 1989 Children Act the County Council had:

- the duty '*...to receive the child into their care and to keep him in their care while the order remains in force.*' Section 33(1)
- '*... parental responsibility for the child*' (Section 33(2)(a); and
- '*...the power ...to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.*' (Section 33(2)(b).

Looked After Children

99. The 1991 Review of Children's Cases Regulation 3 required that L's case must be reviewed within four weeks of the first Care Order, again within three months, and then every six months.

⁷ Guidance that local authorities have a duty to follow unless there are exceptional local reasons justifying departure

100. From September 2004 the Regulations required the Council to appoint an Independent Reviewing Officer who had no involvement in managing the case to:

- chair and participate in the review;
- monitor the Council's performance in respect of the review;
- refer the case to an officer of the Children and Family Court Advisory and Support Service if appropriate to do so;
- ensure that the child's views are understood and taken into account;
- ensure that the persons responsible for implementing any decision of the review are identified; and
- make senior officers aware of any failure to review the case or to implement decisions taken during or as a result of a review.

Placement with Parent

101. Once the Council had decided to place L with her mother, the 1991 Placement of Children with Parents Regulation 7 required the Council to *'...seek to reach agreement..'* with her mother *'...on all the particulars, so far as is practicable, specified in Schedule 2 and the placement shall not be put into effect unless and until such an agreement on all such particulars has been reached and recorded in writing and a copy of it has been given or sent to that person.'*

102. The particulars specified in Schedule 2 includes:

- plans for the child and the objectives of the placement;
- arrangements for support of the placement;
- arrangements for visiting the child to supervise the placement;
- removing the child from the placement if it appeared to the Council that it was no longer in accordance with its duty to safeguard and promote the child's welfare or would prejudice the safety of the child;.
- a statement about the child's health and need for health care and surveillance,;
- a statement about the child's educational needs and the local authority's arrangements to provide for all such needs.

103. Regulation 9 required the Council to satisfy itself that L's welfare was appropriately provided for by the placement with her mother and:

'...(b) make arrangements for a person authorised by the local authority to visit the child from time to time as necessary but in any event—

(i) within one week of the beginning of the placement,

(ii) at intervals of not more than 6 weeks during the first year of the placement,

(iii) thereafter at intervals of not more than three months and also whenever reasonably requested by the child or the person with whom the child is placed and for the person so authorised to make arrangements, so far as practicable, on each visit to see the child alone.'

Personal Education Plans

104. In 2000, the Government produced 'Education of young people in public care' to guide local authorities. The sections that were statutory guidance include:

'Every child and young person in public care needs a Personal Education Plan which ensures access to services and support; contributes to stability, minimises disruption and broken schooling; signals particular and special needs; establishes clear goals and acts as a record of progress and achievement.'

'Securing an educational placement is one of the main criteria which must be used in identifying a suitable care placement. This should generally be taken to mean a fulltime place in a local mainstream school, commencing without delay. Other than for clear health and safety reasons, for example when a child needs a place of safety immediately, care placements should not be made unless an appropriate level of education will be provided.'

'The Government expects local authorities to set a maximum time limit of twenty school days within which they must secure an education placement for any pupil in public care. It will be a full-time place in a local mainstream school unless the circumstances of the child make full-time or local or mainstream provision unsuitable.'

105. In addition, local authorities were advised that:

The PEP should be sensitive to the diverse needs of children and young people and should focus on the action that is required for them to fulfil their potential. Plans should set clear objectives or targets for the young person which relate to academic achievement as well as other personal and, if

appropriate, behavioural targets, and details of who will action the plan with timescales for action and review. It will cover the following four areas: **an achievement record** (academic or otherwise); identification of **developmental and educational needs** (short and long term, development of skills, knowledge or subject areas and experiences); **short-term targets** including progress monitoring; and **long term plans and aspirations** (targets including progress, careers plans and aspirations). The latter might be broken into shorter-term, achievable goals.'

and

The social worker is responsible for initiating a PEP in partnership with the child or young person, designated teacher, parent and/or relevant family member, carer and any other person. Local Authority policies should set down who will co-ordinate any necessary action..., The PEP should be agreed as soon as possible and at least within 20 school days of entering care or of joining a new school. Thus in the case of a child entering care the PEP should be prepared in time for the first review (the 28 day review). Where a child or young person is without a school place it would be helpful for the LEA to provide an officer to liaise with the social worker on a PEP.

Leaving Care

106. The Children (Leaving Care) Act 2000 introduced new sections into the 1989 Children Act:

Schedule 2:

19 (A) *It is the duty of the local authority looking after a child to advise, assist and befriend him with a view to promoting his welfare when they have ceased to look after him.*

19B (4) *... the local authority shall carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide him under this Act—*

(a) while they are still looking after him; and

(b) after they cease to look after him,

and shall then prepare a pathway plan for him.

(5) *The local authority shall keep the pathway plan under regular review.*

19C *A local authority shall arrange for each child whom they are looking after who is an eligible child for the purposes of paragraph 19B to have a personal adviser.*

Section 23E requires that a pathway plan should set out:

(i) the advice, assistance and support that the local authority intend to provide to a child both while looking after him and later; and

(ii) when they might cease to look after him.'

The Children (Leaving Care) (England) Regulations 2001

107. These Regulations required the Council to assess L's needs within 3 months of her 16th birthday and to prepare a pathway plan as soon as possible after that assessment. The pathway plan must set out:

'(a) the manner in which the responsible authority proposes to meet the needs of the child; and

(b) the date by which, and by whom, any action required to implement any aspect of the plan will be carried out.' (Regulation 8(2))

108. Regulation 12 sets out the role of the Personal Adviser as:

to provide advice (including practical advice) and support;

where applicable, to participate in this assessment and the preparation of this pathway plan;

to participate in reviews of the pathway plan;

to liaise with the responsible authority in the implementation of the pathway plan;

to co-ordinate the provision of services, and to take reasonable steps to ensure that he makes use of such services;

to keep informed about his progress and wellbeing; and

to keep a written record of contact with him.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Children and Families Scrutiny Committee**
held on Monday, 3rd August, 2009 at The Capesthorne Room - Town Hall,
Macclesfield SK10 1DX

PRESENT

Councillor R Westwood (Chairman)
Councillor D Neilson (Vice-Chairman)

Councillors Rhoda Bailey, D Beckford, D Flude, J Goddard, G Merry,
M Parsons, L Smetham and D Thompson

Apologies

Councillors O Hunter and A Kolker

25 OFFICERS PRESENT

J Weeks, Strategic Director People
L Butcher, Head of Services for Children and Families
P Mossman, Children and Families
J Thompson, Children and Families
G Betton, Children and Families
D J French, Legal and Democratic Services

26 DECLARATION OF INTEREST/PARTY WHIP

In relation to item 5 Draft Single Funding Formula for Early Years Provision:

- Councillor D Flude declared a personal interest on the grounds that she was a Governor of Westminster Nursery School and a Director of EIPC Ltd; and
- Councillor D Neilson declared a personal interest on the grounds that he was Governor of a school with a nursery.

27 PUBLIC SPEAKING TIME/OPEN SESSION

There were no Members of the Public present who wished to address the Committee.

28 MINUTES OF PREVIOUS MEETING

RESOLVED: That the minutes of the meeting of the Committee held on 6 July be confirmed as a correct record.

29 DRAFT SINGLE FUNDING FORMULA FOR EARLY YEARS PROVISION

The Committee considered a report on a draft single funding formula for early years provision to be implemented in Cheshire East from April 2010. This

Committee was invited to offer any comments to the Cabinet who would be considering the draft formula on 8 September as a basis for wider consultation.

The implementation of a single funding formula was in line with Government Guidance and funding was to be based on occupancy rather than places from April 2010. The current system provided for different ways of funding for the maintained and for the Private, Voluntary and Independent (PVI) sector.

The provision of free early years care for 3-4 year olds was to increase from 12.5 hours to 15 hours for the most disadvantaged areas from September 2009 and to all providers from September 2010. There were currently 203 early years settings in Cheshire East and it was anticipated that some providers would experience a significant negative budget variance due to the changed funding arrangements. The 2010-11 budget included some funding that was unallocated which could be used to support providers during the transition stage. Those providers who were expected to experience a negative impact had been visited by officers and transition plans put in place to offer financial support if necessary in the 2010/11 financial year.

An Early Years Reference Group comprising representatives of early years providers, had been set up as a sub group of the Schools Forum, and had been meeting to develop the formula in line with Department for Children, Schools and Families' guidance. Their recommendation was that a base rate be applied to all sectors at a rate of £3.20 per child per hour, with additional allowances made for flexibility, provision within an area of deprivation and quality. The allowance for quality related to having Early Years Professional Status and Qualified Teacher Status, with a requirement that the Early Years professional lead the practice.

During discussion of the item Members queried whether it was possible for maintained nurseries to charge for their service, raised concern about maintained nurseries' inability to offer more than 15 hours of child care per child per week and whether there could be an additional allowance for any early years provision that was suitable for children where English was not their first language.

RESOLVED: That the Cabinet be advised that:

(a) the draft formula comprising a base rate plus additional allowances for the factors of flexibility, deprivation and quality be supported but consideration be given to introducing an additional allowance for provision that is suitable for children where English was not their first language;

(b) the Committee is concerned about the inequity whereby maintained nurseries are unable to offer more than 15 hours child care per child per week as this may put them at a disadvantage; and

(c) a report be submitted to this Committee with the outcome of the consultation on the proposals.

30 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That in accordance with Section 100(A)4 of the Local Government Act 1972 the public and press be excluded for the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 5 of Part 1 of Schedule 12A to the

Local Government Act 1972 and the public interest would not be served in publishing the information.

31 LOCAL GOVERNMENT OMBUDSMAN INVESTIGATION INTO A COMPLAINT AGAINST THE FORMER CHESHIRE COUNTY COUNCIL

The Committee considered a report on the findings of the Local Government Ombudsman in response to a complaint made against the former Cheshire County Council.

The complaint had been made by L who was a young person who had been subject to a care order. She had been on the child protection register as a small child and from the age of 12 taken into the care of Cheshire County Council but placed at home with her mother who suffered from mental illness and was prone to violent and volatile behaviour. L's mother stopped her from attending school during her last year at primary school and she reached school leaving age without ever having attended secondary school. Her only education was a maximum 10 hours a week with a tutor at a local library although there were significant periods without any education.

The Ombudsman found that the Council was guilty of over-arching maladministration in that it had failed to fulfil its responsibilities for L or to promote her welfare as well as identifying a number of specific and serious instances of maladministration. Before L complained to the Ombudsman, the County Council had recognised the difficulties with the case and had agreed that L should have access to leaving care services until she was 25 years old, receive financial support to undertake remedial education and receive "creative" help with appropriate accommodation.

The Ombudsman had recommended that Cheshire East Council as successor to Cheshire County Council should:

- Apologise to L;
- Pay L £1,5000 to reflect her time and trouble in pursuing her complaint and her distress caused by Cheshire County Council's response to her complaint; and
- Make £45,000 available either for immediate investment in purchasing a home (by shared ownership scheme if necessary) or to be held in an interest-bearing account and released to her when she is 30 years of age or in equal annual thirds when she embarks on and maintains a programme of education leading to qualifications – whichever is sooner.

The Ombudsman also recommended that both successor Councils should consider her report and undertake a review of procedures and practices to ensure good arrangements were in place to support children in their care. The Committee was informed that arrangements had been made for the Head of Services for Children and Families, Cheshire East Council and the Director of Children's Services at Cheshire West and Chester Council to meet with L and her advocate to formally apologise.

The Strategic Director People reported that a number of actions had been taken in the light of the Ombudsman's report including an examination of current caseloads, a review of practices and procedures was underway. The Committee noted that new guidance had been issued regarding the statutory role and

responsibilities of the Lead Member for Children's Services and Members emphasised the importance of ensuring they were aware of all significant issues in their role as Corporate Parents.

The Strategic Director People outlined that there had been a national increase in referrals to children's social care services as well as an increase in referrals to the National Society for the Prevention of Cruelty to Children (NSPCC). The Trade Union for public sector workers, Unison, had expressed concern regarding the morale of social care staff nationally.

Cheshire East Council was currently reviewing its practice and procedures for intervening where there are concerns regarding child welfare, in line with Lord Laming's report and the Government's response.

Cheshire East had commissioned 2 Audit reports on front end services and children under 5 years of age who were subject to a Child Protection Plan. The findings of both reports had now been received and a report would be presented to the next meeting of the Board on key development issues to be implemented. It was agreed that a Member Governance Group would steer the work and the associated Project Plan and that this would be a regular item on the Performance Task Group meeting chaired by the Chief Executive. There would also be regular briefings to Ofsted, Governance Office North West and the Audit Commission.

RESOLVED: That

- (a) the Cabinet be advised that: the Committee supports the proposal to implement the recommendations of the Local Government Ombudsman contained in the Ombudsman's published report.
- (b) the Cabinet be urged to ensure that the Children's Social Care budget is funded adequately.
- (c) both the review of practices and procedures and the Redesigning Social Care Project be endorsed and this Committee be updated on a regular basis on the work of the Member Governance Group;
- (d) Members be kept fully informed of all relevant issues to ensure that they can fulfil their Corporate Parenting role; and
- (e) the visit to front line services by a small group of Members be deferred for the time being.

The meeting commenced at Time Not Specified and concluded at Time Not Specified

Councillor R Westwood (Chairman)

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