

THE "CALL IN" PERIOD FOR THIS SET OF MINUTES ENDS AT 12 NOON ON WEDNESDAY 4 JULY 2012. MINUTE NO's 16, 21 AND 22 ARE NOT SUBJECT TO 'CALL-IN'.

CABINET

MEETING HELD AT THE TOWN HALL, BOOTLE ON THURSDAY 21ST JUNE, 2012

PRESENT: Councillor P. Dowd (in the Chair)
Councillors Fairclough, Hardy, Maher, Moncur and
Tweed

ALSO PRESENT: Councillors Brodie-Browne, Booth, Carr, Papworth,
Roche and Shaw

13. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Cummins.

14. DECLARATIONS OF INTEREST

No declarations of interest were made.

15. MINUTES OF PREVIOUS MEETING

RESOLVED:

That the Minutes of the Cabinet meeting held on 24 May 2012 be confirmed as a correct record.

16. TRANSFORMATION, MEDIUM TERM FINANCIAL PLAN AND REVENUE BUDGET UPDATE

The Cabinet considered the report of the Head of Corporate Finance and ICT which provided an update on the latest assumptions contained in the Medium Term Financial Plan (MTFP) 2013/14 – 2014/15; highlighted the potential budget gaps for that period and recommended the first stage of budget reductions to contribute to the balancing of the 2013/14 budget.

The report also sets out proposals for a change to the Treasury Management Policy to allow improvement of cash management.

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED: That:

- (1) the Council be recommended to approve the Medium Term Financial Plan (MTFP) projected assumptions contained in the report;

- (2) the potential budget shortfalls within the MTFP be noted as follows:-

	£m
2013/14	21.7
2014/15	22.0

- (3) the Council be recommended to approve the initial budget proposals for 2013/14 and future years outlined in paragraph 8 of the report, and that officers be delegated to take the necessary actions to achieve the impact outlined;
- (4) the Council be recommended to approve the change to the Treasury Management Policy as outlined in paragraph 8 of the report.

17. SUPPORTING PEOPLE REVIEW UPDATE

The Cabinet considered the report of the Director of Older People which provided an update on the progress of the Supporting People Review and set out the proposed commissioning priorities for the Supporting People Service with regard to the achievement of budget savings required for 2012/13 and 2013/14.

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED: That:

- (1) approval be given to the adoption of the principles set out in 5.1 of the report;
- (2) Officers be authorised to work with providers, utilising the principles, to formulate reduction proposals to meet the required budget savings in 2012/13 and 2013/14; and
- (3) that a further report be submitted to the next meeting of the Cabinet on 19 July 2012.

18. CARE HOME FEES 2011/12 AND 2012/13

Further to Minute No. 94(5) of the meeting held on 2 February 2012, the Cabinet considered the report of the Director of Older People on the current position relating to the fees payable to Care Homes for 2011/12 and 2012/13 in respect of residents placed in those homes by the Council.

The report indicated that in December 2010, as part of the budget-setting process for 2011/12, the Council decided to make no increase for 2011/12 to fees payable to Care Homes in respect of residents placed in those homes by the Council. An application was subsequently made to the High Court by Sefton Care Association (SCA) and four Care Home providers for

a Judicial Review of that decision. The case was heard in August 2011 and the Judgment that was handed down on 9 November 2011 quashed the Council’s decision, on the grounds that the consultation on the decision had not been adequate and in making the decision the Council had not had “*due regard*” to the “*actual costs*” of providing that care. A full copy of the Judgment was provided at Annex 1 to the report.

The Judgment ordered that the Council make a fresh decision as to the fees that it will pay to care homes in Sefton for its financial year 2011/12 in respect of residents placed in those homes by the Council, and before making the decision the Council should consult with, and shall take into account representations made and evidence provided by the Claimants (i.e. SCA and the four Care Home Providers who brought this case). A copy of all the representations received, including the Laing and Buisson Report on the actual costs of residential care in Sefton were also appended to the report.

The Leader of the Council indicated that the subject of the report was very complex and it was crucial that the Cabinet Members gave full consideration to the content of the report and in particular, took into account the equality impact assessment and risk management issues in Sections 4 and 5 of the report before reaching a decision.

The Strategic Director – People referred to Sections 4 and 5 of the report; the extensive consultations which had taken place with the Care Home Providers; the representations which the Providers had submitted and the officer response, which were set out within the report. He indicated that officers would continue to meet and consult the Providers on this issue and consider any further evidence submitted with regard to the actual cost of providing care for residents placed in those homes by the Council.

Members of the Cabinet raised questions on the following issues referred to in the report and Officers responded to the issues as referred to below:

Page / Paragraph in the Report	Question / Response
Page 73 – Recommendations (Councillor Fairclough)	Why had the officers recommended a 0% increase in Care Home fees for 2011/12 and 2012/13? And what are the risks with that recommendation? Response: After taking into account all of the factors set out in the report, the officers are satisfied that the current fees proved sufficient to meet assessed care needs in 2011/12. Officers are further satisfied that the fees would continue to be sufficient to meet assessed care needs in 2012/13. The key risk, is if we’ve got our assessment wrong and we set fees below costs of meeting assessed care needs, this in turn leads to the risks identified in

	<p>sections 4 and 5 of the report, in particular: some care homes struggle to adapt to the fees set, leading to them becoming unviable and withdrawing from the market; homes increase the top-up charged to cover the difference between the usual cost fee level and the fee they wish to charge, or more homes charge top-ups; homes decide not to take Council placements, or reduce the number of placements, reducing choice for Council-funded service users and making it more difficult to place service users. There is also the risk that standards within homes fall. These risks are more relevant to 2012/13 and need to be balanced against what we know happened in 2011/12, when there was no deterioration in quality, no increase in number of homes charging a top-up, no increase in homes declining Council-funded placements, no home closures due to fee levels and investors still prepared to invest, including those not previously in the Borough. The Council would need to manage the risks on an on-going basis, working with care homes, social care staff, CQC and service users.</p>
<p>Page 82 – Paragraph 3.5 (Councillor Tweed)</p>	<p>The Laing & Buisson Report states that “there is no such figure as the actual cost of residential care in Sefton”. If that’s right, how can we have due regard to them?</p> <p>Response: There are 140 plus Care Homes in Sefton and they have a wide range of actual costs for the delivery of care services. Members need to have due regard to that range of costs. Whilst the Laing and Buisson report is not considered to be definitive, it highlights that the wide range of costs, as indicated in Table 21 (Food Costs) and Table 29 (Training Costs) of the report (pages 181 and 186) which the Council must have due regard to. Consequently, any single figure provided for actual cost can only be an approximation of the cost, the Laing and Buisson report is based on the median costs, i.e. higher than the costs of half the homes and lower than the cost of half the homes, so that figure would not meet all the costs of all the homes. The Council must set its “usual costs”, i.e. the fee the Council would usually expect to pay to meet assessed care needs. Members can also take into account other local factors that might indicate whether or not fees are sufficient, for example, the viability of the market and the ability for the Council to place service users.</p>

<p>Page 78 – Paragraph 1.10</p> <p>(Councillor Moncur)</p>	<p>Can you explain the different view in the court cases referred to in this paragraph about whether or not the fees could be set below actual costs.</p> <p>Response: There are a range of actual costs in Sefton, some considerably more expensive than others and fees need not reimburse all the actual costs of every home. It may be that the actual costs of some homes are simply not affordable, or are above what the Council needs to pay as there are sufficient lower priced homes of a suitable standard available. The Judgment in the Neath case said that the Council had to understand providers costs, not to fully reimburse them. The duty is to set “usual costs” sufficient to meet assessed care needs of supported residents, having “due regard” to “actual costs”, not necessarily to pay actual costs in full, otherwise the guidance would say that.</p> <p>Within the actual costs of different homes will be different levels of economy, efficiency and effectiveness, the Best Value duty requires us to seek out value for money and it would not be reasonable to expect the Council to pay costs of an inefficient, uneconomical supplier or to meet the costs of providing care, support and services over and above those necessary to meet assessed care needs. This would be inconsistent with the Best Value duty to which we are also required to have “due regard”. Finally, the “Building Capacity Agreement” referred to at paragraph 1.4 refers to the Council taking account of actual costs and potential for improved performance and more cost effective ways of working.</p>
<p>Page 80 – Paragraph 2.2</p> <p>(Councillor Maher)</p>	<p>Clarification was sought on the figures referred to in that paragraph.</p> <p>Response: The paragraph details the number of bed spaces available in Care Homes within Sefton and the number of beds funded by Sefton Council during 2010/11. The 2,580 figure refers to all placements during the year, including people who died during the year and people placed temporarily (e.g. respite, re-enablement / rehabilitation & intermediate care) as well as permanent placements, whilst the 1,680 figure provides a snapshot of the beds in use at that particular time at the end of 2010/11.</p>

<p>Page 86/87 – Paragraph 3.14 (Councillor Hardy)</p>	<p>Can you comment on the statement by the SCA referred to in that paragraph which indicates that the “SCA genuinely believes that the situation is at or approaching crisis point”.</p> <p>Response: Members will recognise that similar statements have been made before, over the years, without crisis point being reached. The current evidence available does not demonstrate that we are at a crisis point. There have been no Care Home closures or any decline in satisfaction levels or quality ratings. It is difficult to assess if we are approaching crisis point but if there is any change in the current situation and any further evidence is provided to demonstrate that we are approaching a crisis, the officers would give full consideration to the evidence. The Council would continue to talk with the Providers Forum and officers are fully committed to listening to and entering into dialogue with the providers on a regular basis.</p>
<p>Page 89 – Paragraph 3.25 (Councillor P. Dowd)</p>	<p>Can you comment on the points made by the SCA which they believe “undermine the credibility and rationality” of the Council’s stated view of the Laing and Buisson report.</p> <p>Response: The officers refute those claims made by the SCA. The Council need to understand the costs of care homes but a full breakdown of the costs showing how the component parts contribute to total costs has not been provided by Laing & Buisson. We are not able to analyse how the total costs for each home differ or to assess efficiency or effectiveness within the costs provided. We will continue to give full consideration to any future evidence provided.</p>
<p>Page 86 – Paragraph 3.12 (Councillor P. Dowd)</p>	<p>Can you comment on the disparity of the requests for ‘inflationary uplifts’ referred to in that paragraph.</p> <p>Response: It is important to acknowledge that these represent the particular position of these providers, their particular cost base, business model and ethos, some are not-for-profit providers, which doesn’t necessarily mean their costs are lower but gives them a different business model. The very large difference of a range of 0%-4.5% in 2012/13 rather than a minimum of 21% in 2011/12 suggested by the Laing & Buisson report, is part of the evidence which casts doubt on the</p>

	<p>accuracy and applicability of Laing & Buisson figures across the Sefton market. It does again emphasise the range of actual costs and possible differences in efficiency/economy of costs and business models not just between these and those in the Laing & Buisson Survey but also within the small number of individual responses received.</p>
<p>n/a (Mr B. Milburn, Strategic Director – Place)</p>	<p>Can you assure me that the impact on service users has been considered in addition to the economic factors.</p> <p>Response: We can give you that assurance. Whilst much of the discussion is about costs, the service users are at the centre of our concerns. The fee must be sufficient to meet assessed care needs. The risks identified within the impact and risk management elements of the report include, potential for falling standards in homes, homes charging higher top-ups or more homes charging top-ups, and reduced choice for Council-funded placements. There is also a suggestion that homes may refuse to take Council-funded placements or take fewer placements. The report highlights that if a home decided it could no longer provide for an existing resident, this would have implications for that resident's Article 8 Human Rights. The Council would address any such case on its merits, as it does now when presented with a resident who had been paying a top-up but can no longer afford to, some residents are re-located to a new home but with some high-need, elderly and long-term residents this isn't appropriate. We will continue to monitor the market, work with providers, social care staff and CQC to ensure that the needs of service users are met.</p>

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED: That:

- (1) after careful consideration of all the issues outlined in the report and having balanced the issues to be taken into account, approval be given to:
 - (a) a 0% increase in care home fees for 2011/12; and
 - (b) a 0% increase in care home fees for 2012/13

- (2) the Director of Older People be directed to submit a further report to Cabinet should the ongoing monitoring of the implementation of this decision, as outlined in the Equality Analysis Report, indicate subsequently that the level of fees paid may not be sufficient, or that they become insufficient, to meet the assessed care needs of supported residents.

19. SEFTON METROPOLITAN BOROUGH COUNCIL (THORNTON TO SWITCH ISLAND LINK ROAD) A5758 BROOM'S CROSS ROAD (SIDE ROADS) ORDER 2012

Further to Minute No. 242 of the meeting held on 3 March 2011, the Cabinet considered the report of the Director of Built Environment seeking approval to make, advertise and submit for confirmation a Side Roads Order for the proposed Thornton to Switch Island Link.

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED: That:

- (1) a Side Roads Order be made under Sections 14 and 125 and Schedule 1 of the Highways Act 1980 to be known as the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road (Side Roads) Order 2012 for highway improvements and modifications (described in Annex A of the report) needed for the construction of the proposed new highway, the Thornton to Switch Island Link; and
- (2) the Director of Built Environment in consultation with the Head of Investment Programmes and Infrastructure, the Head of Planning Services and Head of Corporate Legal Services be authorised to take all necessary steps to secure the making, submission for confirmation and implementation of the Side Roads Order including (but not limited to) drafting and publishing the Statement of Reasons, the publication, advertisement, notification and service of all notices, the investigation of and response to objections, and the presentation of the Council's case at any Public Inquiry.

20. SEFTON METROPOLITAN BOROUGH COUNCIL (THORNTON TO SWITCH ISLAND LINK ROAD) A575 AND BROOM'S CROSS ROAD COMPULSORY PURCHASE ORDER 2012

Further to Minute No. 19 above, the Cabinet considered the report of the Director of Built Environment seeking authority to make, advertise and submit for confirmation a Compulsory Purchase Order to acquire land and rights for the proposed Thornton to Switch Island Link and associated works and to publish and approve the accompanying Statement of Reasons.

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED: That

- (1) a Compulsory Purchase Order be made under Sections 239, 240, 246, 249 and 250 of the Highways Act 1980 and the Acquisition of Land Act 1981 to be known as the Sefton Metropolitan Borough Council (Thornton to Switch Island Link Road) A5758 Broom's Cross Road Compulsory Purchase Order 2012 for the acquisition of land and new rights (the 'Order Land') within the areas shown on the plans in Annex A for the construction of the proposed new highway, the Thornton to Switch Island Link and associated works described in the Side Roads Order;
- (2) the Director of Built Environment in consultation with the Head of Investment Programmes and Infrastructure, the Head of Planning Services and Head of Corporate Legal Services be authorised to:
 - take all necessary steps to secure the making, submission to Secretary of State for confirmation and implementation of the Compulsory Purchase Order including (but not limited to) drafting and publishing the Statement of Reasons, the publication, advertisement, notification and service of all notices, the investigation of and response to objections, and the presentation of the Council's case at any Public Inquiry;
 - negotiate and acquire interests in land and new rights set out in the Compulsory Purchase Order either by agreement or compulsorily; and
 - negotiate and enter into any appropriate agreements with Government departments and agencies to secure the necessary access and rights to construct the scheme and undertake any associated works.

21. SCHEME OF MEMBERS ALLOWANCES

The Cabinet considered the report of the Director of Corporate Commissioning on the proposals by the Independent Remuneration Panel for the implementation of a new Scheme of Members' Allowances.

This was a Key Decision and was included in the Council's Forward Plan of Key Decisions.

RESOLVED:

That the following recommendations be submitted to the Council for consideration on 5 July 2012:-

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- (1) the recommendations made by the Independent Remuneration Panel set out in paragraph 2.1 of the report be noted;
- (2) the Cabinet's view that Members' Allowances be frozen at the current level be forwarded to the Council, subject to the need to comply with the Department for Communities and Local Government Guidance referred to in the report;
- (3) the publicity required as set out in Section 3 of the report be undertaken; and
- (4) the Council's Constitution be amended to insert the revised Scheme.

22. URGENT ACTION TAKEN BY THE LEADER OF THE COUNCIL

The Cabinet considered the report of the Leader of the Council which provided details of an urgent decision he had taken on 30 May 2012 relating to the closure of St. George of England High School on 30 August 2012.

RESOLVED:

That the report be noted.