

Thurrock - An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future

## Cabinet

The meeting will be held at **7.00 pm** on **14 June 2023**

**Council Chamber, CO3, Civic Offices, New Road, Grays, RM17 6SL**

### Membership:

Councillors Andrew Jefferies (Chair), Deborah Arnold (Deputy Chair), Adam Carter, Barry Johnson, Ben Maney, George Coxshall and Graham Snell

### Agenda

Open to Public and Press

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<b>1 Apologies for Absence</b>	
<b>2 Minutes</b>	<b>5 - 18</b>
To approve as a correct record the minutes of Cabinet held on 15 March 2023.	
<b>3 Items of Urgent Business</b>	
To receive additional items that the Chair is of the opinion should be considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.	
<b>4 Declaration of Interests</b>	
<b>5 Statements by the Leader</b>	
<b>6 Briefings on Policy, Budget and Other Issues</b>	
<b>7 Petitions submitted by Members of the Public</b>	
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**10 Appointments to Outside Bodies, Statutory and Other Panels 19 - 36**

**11 Waste Report - (Report to Follow) (Decision 110653)**

This item will be considered under the urgency provisions contained in Chapter 8, Section 14 of the Constitution.

**Exclusion of the Public and Press**

Members are asked to consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

**12 Award of Contract for Occupational Therapy and Independent Mobility Assessment Service (Decision: 110654) 37 - 46**

**13 Award of Contract to Supply, Install, Maintain and Repair Telecare Equipment (Decision: 110655) 47 - 56**

**Queries regarding this Agenda or notification of apologies:**

Please contact Rhiannon Whiteley, Senior Democratic Services Officer by sending an email to [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)

Agenda published on: **6 June 2023**

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# DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

Breaching those parts identified as a pecuniary interest is potentially a criminal offence

## Helpful Reminders for Members

- *Is your register of interests up to date?*
- *In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?*
- *Have you checked the register to ensure that they have been recorded correctly?*

## When should you declare an interest *at a meeting*?

- **What matters are being discussed at the meeting?** (including Council, Cabinet, Committees, Subs, Joint Committees and Joint Subs); or
- If you are a Cabinet Member making decisions other than in Cabinet **what matter is before you for single member decision?**



Does the business to be transacted at the meeting

- relate to; or
- likely to affect

any of your registered interests and in particular any of your Disclosable Pecuniary Interests?

Disclosable Pecuniary Interests shall include your interests or those of:

- your spouse or civil partner's
- a person you are living with as husband/ wife
- a person you are living with as if you were civil partners

where you are aware that this other person has the interest.

A detailed description of a disclosable pecuniary interest is included in the Members Code of Conduct at Chapter 7 of the Constitution. **Please seek advice from the Monitoring Officer about disclosable pecuniary interests.**

**What is a Non-Pecuniary interest?** – this is an interest which is not pecuniary (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

### Pecuniary

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting

If the Interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register

Unless you have received dispensation upon previous application from the Monitoring Officer, you must:

- Not participate or participate further in any discussion of the matter at a meeting;
- Not participate in any vote or further vote taken at the meeting; and
- leave the room while the item is being considered/voted upon

If you are a Cabinet Member you may make arrangements for the matter to be dealt with by a third person but take no further steps

### Non- pecuniary

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature



You may participate and vote in the usual way but you should seek advice on Predetermination and Bias from the Monitoring Officer.

## Our Vision and Priorities for Thurrock

An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future.

1. **People** – a borough where people of all ages are proud to work and play, live and stay
  - High quality, consistent and accessible public services which are right first time
  - Build on our partnerships with statutory, community, voluntary and faith groups to work together to improve health and wellbeing
  - Communities are empowered to make choices and be safer and stronger together
  
2. **Place** – a heritage-rich borough which is ambitious for its future
  - Roads, houses and public spaces that connect people and places
  - Clean environments that everyone has reason to take pride in
  - Fewer public buildings with better services
  
3. **Prosperity** – a borough which enables everyone to achieve their aspirations
  - Attractive opportunities for businesses and investors to enhance the local economy
  - Vocational and academic education, skills and job opportunities for all
  - Commercial, entrepreneurial and connected public services

## Minutes of the Meeting of the Cabinet held on 15 March 2023 at 7.00 pm

The deadline for call-ins is Friday 24 March 2023 at 5.00pm.

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**Present:** Councillors Mark Coxshall (Leader), Deborah Arnold (Deputy Leader), Qaisar Abbas, Jack Duffin, Andrew Jefferies, Barry Johnson, Ben Maney, Graham Snell and Luke Spillman

**In attendance:** Ceri Armstrong, Strategic Lead Adults Social Care  
Mark Bradbury, Director of Place  
Asmat Hussain, Interim Director of Legal and Governance, and Monitoring Officer  
Ewelina Sorbjan, Interim Director of Housing  
Ian Wake, Corporate Director of Adults, Housing and Health  
Karen Wheeler, Director Strategy, Engagement and Growth  
Jonathan Wilson, Interim Director of Finance  
Nicole Wood, Essex County Council Commissioner  
Lucy Tricker, Senior Democratic Services Officer

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Before the start of the Meeting, all present were advised that the meeting was being live-streamed and recorded; and would be uploaded to the Council's website.

### 110. Minutes

The minutes of the Cabinet meeting held on 22 February 2023 were approved as a true and correct record.

### 111. Items of Urgent Business

There were no items of urgent business.

### 112. Declaration of Interests

Councillor Abbas explained that, in relation to Item 10: Thameside Centre, he had previously sat on the Board of Governors for Waltham International College, who had submitted a bid for the Thameside Centre, but he had stepped down from this position in 2022. He explained that therefore he did not have an interest to declare, but wanted to ensure Cabinet were aware.

### 113. Statements by the Leader

The Leader began his statement by stating that the Council were continuing their road to financial recovery, and much work was being undertaken on these challenges. He explained that the Council had employed new members of the senior management team, and were currently waiting on the publication of directives from the Improvement and Recovery Plan. The Leader stated that the Council had set a balanced budget, with assistance from central

government, and had started to roll back the investment strategy. He explained that the process for selling the Toucan asset had begun, and the Council were working closely with administrators on this process. He stated that a new Commissioner Chief Executive would shortly begin work for the Council, and thanked Ian Wake for all his hard work as Acting Chief Executive.

**114. Briefings on Policy, Budget and Other Issues**

Councillor Jefferies stated that the budget report had included a proposal to close the Household Waste and Recycling Centre for two days per week, which would lead to job losses. He explained that the team had reviewed this proposal and had found a solution to keep the Centre open seven days per week and maintain all jobs, whilst still making the necessary savings.

**115. Petitions submitted by Members of the Public**

No petitions had been submitted by members of the public.

**116. Questions from Non-Executive Members**

The Leader stated that one question from a Non-Executive Member had been received, and this would be heard during Item 14: Blackshots Estate – Demolition and Redevelopment.

**117. Matters Referred to the Cabinet for Consideration by an Overview and Scrutiny Committee**

Other than those items already contained within the agenda, no items had been referred to the Cabinet for their consideration by an overview and scrutiny committee.

**118. Thameside Centre (Decision: 110642)**

The Leader introduced the report and stated that he would make an ongoing commitment to listen to all parties involved with the Thameside. He explained that £1.2m funding had been allocated from the capital programme for the relocation of the Central Library, and the team were working hard to achieve Accredited Status for the museum. He thanked the Corporate Overview and Scrutiny Committee for their comments and proposed recommendation amendments, which had been circulated to Cabinet Members and members of the public, and stated that recommendation 3 contained an error which would be amended from “consultation on alternative options for the delivery” to “consultation on all options for the delivery”.

Councillor Arnold felt pleased to see consultation would be undertaken on the relocation of services and sought assurances that there would be enough money to relocate the museum. The Leader confirmed that money had been allocated for the relocation of the museum, and highlighted that concerns had been raised regarding the archiving work regularly undertaken by museum



staff and volunteers. He explained that the team would be working to improve and protect the heritage of the borough currently stored in archives. Councillor Spillman echoed Councillor Arnold's comments and felt pleased to see consultation would be undertaken, whilst discussions continued with TLS/TICC. Councillor Snell thanked the Corporate Overview and Scrutiny Committee for their discussions and suggested amendments, many of which had been taken on board by Cabinet. He stated that any updates on the Thameside would be referred to the Committee before coming to Cabinet. Councillor Maney questioned if the £18-20m of future investment to bring the Thameside Complex back up to standard was accurate. The Leader explained that the £18-20m investment figure had been estimated over a 30-year period, but the Council would endeavour to be open and transparent by outlining how this figure was determined. He stated that he had conversed with the Director of Place regarding this figure, and he would work to ensure it formed part of the consultation. Councillor Arnold sought assurances that the Council would continue to consider all options available for the Thameside. The Leader stated that all options would be considered, including ongoing discussions with the TLS/TICC bidders.

**RESOLVED: That Cabinet:**

- 1. Noted the bids from Thurrock Lifestyle Solutions/Thurrock International Celebration of Culture and Waltham International College and thanked them for their efforts to try and find a financially sustainable alternative for the future of the building.**
- 2. Noted the significant concerns regarding both proposals and that neither is recommended, in its current form, as a financially sustainable alternative for the future of building. Cabinet agrees that negotiations and discussions will continue with TLS/TICC to try and facilitate a financially sustainable bid.**
- 3. Authorised the Director of Place to undertake consultation on all options for the delivery of cultural activities and events in Grays and the wider borough. A report on this recommendation to be brought back to the Corporate Overview and Scrutiny Committee and Cabinet on completion of the consultation.**
- 4. Authorised the Corporate Director of Adults, Housing and Health to undertake consultation on the relocation of the library from the Thameside Building to the Civic Offices. A report on this recommendation to be brought back to the Corporate Overview and Scrutiny Committee and Cabinet on completion of the consultation.**
- 5. Authorised the Director of Place to undertake consultation on the relocation of the museum from the Thameside Building to the Civic Offices with a view to achieving Accredited Museum status. A report on this recommendation to be brought back to the Corporate Overview and Scrutiny Committee and Cabinet on completion of the consultation.**

**6. Noted the allocation of £1.2million in the Capital Programme agreed at Council on 1st March 2023, funded from asset sales, for the relocation of the library and museum.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**119. Thurrock Supported Bus Services (Decision: 110643)**

Councillor Maney introduced the report and felt that it was a difficult decision to make, as the Council had been funding the 11, 265, and 374 bus services for approximately four years, which had served many communities. He explained that previously these services had been funded by one-off government grants, but would cost the Council approximately £785,000 moving forwards, and this could increase to almost £1mn after inflationary costs were considered. He felt that this was unsustainable for the Council in the current financial context, as providing buses was not a statutory service. He added that the services were currently under-used and therefore, the recommendation was to withdraw these buses. Councillor Maney described how a detailed consultation over twelve months had been undertaken, and a twelve-month extension to the services had been granted. He summarised and stated that the team had considered alternative options for the services, but none had been deliverable.

Councillor Arnold thanked Councillor Maney and officers for their hard work on the report, but felt that Fobbing had not been fully represented in the consultation as consultation documents had not been provided in the shops or Village Hall. She felt that Ward Members should have been more included in the consultation, but thanked officers for taking on-board comments from the submitted petition and working to offer an alternative bus service. She stated that she would continue working with officers and bus providers on the future of bus provision to ensure all communities were included. Councillor Johnson stated that he had spoken to residents in his ward who would be impacted by the withdrawal of the bus service, and he understood the upheaval this may cause some residents. He felt that it was a large spend for the Council so agreed with the recommendations, but he would continue to search for a solution to bus provision in Orsett.

Councillor Maney confirmed that lots of work on the consultation had been undertaken, and officers had tried to reach all audiences. He added that consultation documents had been available on the buses themselves and drivers had been instructed to hand these out to service users. He stated that the consultation process would continue to be reviewed to ensure all audiences are reached. Councillor Maney added that Fobbing would have a new bus arrangement as an option to loop other services had been available, but this option was not workable for other communities. He highlighted recommendation 4 which would ensure that Members and officers would continue to review the borough's transport needs, and seek alternative options for bus services in more rural communities. Councillor Arnold questioned if future planning applications in these areas could contain

provision for bus services, and if these could be funded through S106 monies. She felt that bus provision for rural communities linked into adult social care, and other Council directorates. The Leader explained that First Bus had recently taken over from Ensign in the borough, and he would be meeting with the new owner to discuss bus routes and services connecting the east and west of the borough. He thanked the Planning, Transport and Regeneration Overview and Scrutiny Committee for their views contained within the report and for their continued challenge of Cabinet Members.

**RESOLVED: That Cabinet:**

- 1. Approved the withdrawal of funding provision of the three supported services the 11, 265 and 374.**
- 2. Approved the procurement of off-peak day-time provision three days a week to the community of Fobbing. This would involve re-routing some existing commercial bus routes through Fobbing, providing a link between Stanford-le-Hope and Basildon. This would be for an initial 12-month period with a review of usage to be undertaken before any extension.**
- 3. Noted the net saving of £427,000 delivered by these decisions.**
- 4. Noted that the following communities will have no or limited public transport provision linking them to the rest of the borough – Bulphan, East Tilbury Village, Horndon-on-the-Hill, North Stifford, West Tilbury, and western parts of Aveley. East Tilbury and Linford would also lose all bus provision. While Members will be mindful of the ongoing review being undertaken by the Planning, Transport and Regeneration Overview and Scrutiny Committee, Cabinet directs Transportation Services to keep the public transport needs of these communities under review and consider future options which could address any unmet need, within the context of the council's financial situation.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**120. Blackshots Estate: Demolition and Redevelopment (Decision: 110646)**

Councillor Spillman introduced the report and stated that it proposed to demolish the three high-rise towers in Blackshots, decant residents and plan new developments. He felt that the Blackshots towers were not fit for residents to live in, and thanked Councillors Redsell and Maney for their hard work as Ward Members.

Councillor Redsell thanked Cabinet for their report, but felt concerned that the new development would use greenbelt land, that would not be replaced in the Blackshots area. She highlighted that many of the flats in the high-rises were blighted with damp and mould, and felt pleased to see the issue would be dealt with through demolition and development. Councillor Spillman thanked

Councillor Worrall for her work on this issue as Shadow Portfolio Holder. He added that a small parcel of greenbelt land may be needed for the new development as it would have a wider footprint than the existing tower blocks, but the design team would be instructed to try and avoid this wherever possible. He explained that input would be needed from residents, Ward Members and the Housing Overview and Scrutiny Committee when the development reached the design stage. He added that it may be a difficult process, as a small number of the flats were leasehold, but this report marked the start of the process towards demolition. He summarised and stated that the commissioners had been included throughout, and although the full sum of money had not yet been agreed, the team would continue to work with commissioners on this project.

Councillor Abbas thanked the Portfolio Holder and officers for the report, and supported the recommendations. He stated that he had received emails from residents within the blocks who also supported the proposed demolition, decant and new development. Councillor Maney agreed with the recommendations and felt it was an ambitious project. He stated that there were ongoing issues with the greenbelt and memorial playing field, but officers were working through these issues. The Leader agreed that it was ambitious, but felt it would provide good value for money and would help residents in the high-rises.

**RESOLVED: That Cabinet:**

**Approved:**

- 1. The proposed site area for developing proposals for the future of the Blackshots estate.**
- 2. Commencement of decanting residents from these properties and the treatment of these residents in line with the Council's allocations policy.**
- 3. Payment of home loss and disturbance payments as appropriate.**
- 4. Commencement of negotiation with leaseholders for the repurchase of properties with approval to complete purchase delegated to the Corporate Director Adults, Housing and Health and Chief Financial Officer, in consultation with the Director of Place and the Portfolio Holders for Finance, Housing and Growth.**
- 5. Subject to further Cabinet approval the use of Compulsory Purchase Powers under s26 Town and Country Planning Act 1990 should this become necessary.**
- 6. In view of the decant and leasehold repurchase decisions, no dwellings within these three blocks shall be re-let.**
- 7. Service of a demolition notice under Section 138B and Schedule 5A of the Housing Act 1985 which will confirm the Council's intention to**

**demolish the buildings and suspend the obligation on the Council to complete right to buy applications on the three tower blocks in question.**

**8. Approval to negotiate and settle any statutory compensation claims made by residents as a result of the service of the Initial Demolition Notice delegated as at paragraph 4 above.**

**9. Establishment of a budget of £2.7m to meet the costs of purchase of leasehold interests.**

**10. Agreed to receive a report in December 2023 to consider the full Business Case for redevelopment of the site and determine the most appropriate financial option at that time.**

**11. Housing Overview and Scrutiny Committee requested that regular public reports are made on project milestones (including slippage factors) and requested officers to confirm what member-led mechanisms will be used to review the adherence to the plan.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

*Councillor Redsell left the meeting at 7.50pm.*

#### **121. Financial Update - Quarter 3 2022/23 (Decision: 110644)**

Councillor Snell introduced the report and stated it showed a slight financial improvement from the Quarter 2 2022/23 report, as finances had moved positively by approximately £28,000. He stated that there remained a deficit of approximately £469m which was set out at the table within the Executive Summary. He added that page 265 of the agenda highlighted the additional risks and uncertainties regarding the Council's finances including additional pressures linked to the pay award and service provisions. He added that asset sales also posed an uncertainty to the Council as it could not be accurately determined when these assets would be sold. He summarised and stated that updates on major projects would be fed through the relevant overview and scrutiny committee.

The Leader expressed concern regarding the sale of assets but felt hopeful that these could begin at pace and would be delivered on time. Councillor Snell confirmed that the team were hoping to have assets sold by the end of the year, including the £750m sale of the Toucan asset. He explained that a report would be brought back on this sale when it occurred. The Leader thanked the commissioners for their continued hard work and support in financial decisions. Councillor Abbas felt the sale of the Toucan asset would be positive for the Council, and questioned if there was a plan for projected investment divestment. Councillor Snell confirmed there was a divestment plan, and this would help to reduce the Council's debt once the assets had been released.

**RESOLVED: That Cabinet:**

**1. Noted the 2022/23 forecast gross funding gap of £469.553, noted the mitigation proposed locally and the wider need for exceptional financial support to mitigate the net funding gap.**

**2. Noted the position set out in respect of the capital programme in section 4 and that a further review of the programme will be undertaken in Q1 of 2023/24.**

**3. Noted the fragility of the financial situation and in particular the reliance upon asset sales to deliver the above position.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**122. Greater Essex Devolution (Decision: 110645)**

The Leader introduced the report and stated that it had been presented to the Corporate Overview and Scrutiny Committee last week who had agreed to begin a dialogue with government on Greater Essex Devolution. He stated that a similar report had already been agreed by Essex County Council and Southend-on-Sea City Council, and the report did not present a decision, but an Expression of Interest to continue conversations with government on devolution. He summarised and stated that devolution would not move forward unless it presented benefits to Thurrock residents.

Councillor Abbas felt that the report listed many benefits for Thurrock residents, but did not include potential issues such as an additional council tax precept or impact on services. He also questioned if the devolution proposal was linked to the intervention. The Leader commented that devolution could potentially bring £1bn into Greater Essex over many years, but could also lead to a council tax precept if a mayor was introduced. He explained that the report only outlined the Expression of Interest, but Thurrock needed to be part of the conversation to understand the advantages and disadvantages of devolution. He commented that the Corporate Overview and Scrutiny Committee had also highlighted some concerns and risks, but had agreed to move forward with the Expression of Interest. The Leader confirmed that the conversation regarding devolution had begun before intervention, and was separate to the intervention and commissioner's process. He confirmed commissioners would not be involved in any devolution decision for Thurrock. Councillor Snell highlighted the minutes from the Corporate Overview and Scrutiny Committee that had been circulated to Cabinet Members, and shared some of their concerns, but felt that the Council needed to be involved in the conversations and would therefore be supporting the recommendations. The Leader also shared some concerns regarding the competing interests of two airports and two Freeports in Greater Essex devolution, but felt there could also be advantages.

**RESOLVED: That Cabinet:**

**1. Considered the Expression of Interest and agreed to support a submission to Government to begin a dialogue for a Greater Essex Devolution deal and understand the benefits it might bring to residents or Thurrock.**

**2. Delegated authority to the Director of Strategy, Engagement and Growth, in consultation with the Leader, to make or agree amendments to the annexed Expression of Interest prior to its submission to government.**

*Reason for decision: as outlined in the report*

*This decision is subject to call-in*

**123. School Capital Programme Update 2022/23 (Decision: 110647)**

Councillor Johnson introduced the report and stated that it proposed expanding a school, the need of which had been derived from the Pupil Place Plan. He stated that £3mn would be given from the Department of Education capital needs grant, and this would include monies for architect fees and disbursements.

Councillor Carter stated that the report had been presented to the Children's Services Overview and Scrutiny Committee yesterday, who had agreed that the school expansion would be good for the borough. He explained that the Committee had requested regular update reports go back through the Overview and Scrutiny Committee as the design and procurement process continued. Councillor Johnson expressed his support for regular update reports at overview and scrutiny. Councillor Arnold questioned if the Department for Education grant would be ringfenced and protected. Councillor Johnson confirmed that the grant would be ringfenced, and there would be no scope for overspend.

Cabinet Members agreed a new recommendation 5, which would ensure update reports would be presented to the Children's Services Overview and Scrutiny Committee and Cabinet.

**RESOLVED: That Cabinet:**

**1. Approved a £3.0m budget for the expansion of Tilbury Pioneer Academy to be funded from the School's Basic Need capital funding 2022/23.**

**2. Approved the commencement of the procurement process in accordance with Council and UK procurement procedures to appoint 1. A Design and multi discipline project team, for the Tilbury Pioneer aspect of the School Capital Programme and 2. Following planning approval and the production of a full technical specification, undertake a further procurement exercise to appoint a Principal Contractor to take forward the proposed Tilbury Pioneer scheme.**

**3. Delegated authority to the Director of Children's Services, in consultation with the relevant Portfolio Holder, to enter into any form of agreement following the award of the agreements arising from 1.2 above in compliance with the Council's procurement regulations.**

**4. Noted the recent in-year accommodation works that have been commenced in order to ensure sufficient pupil places for 2022/23 in-year applications.**

**5. A report on these recommendations be brought back to the Children's Overview and Scrutiny Committee, and Cabinet, on completion of contract negotiations.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**124. Children's Transport - One Year Extension to the Current Framework 2023/24 (Decision: 110648)**

Councillor Johnson introduced the report and stated that as part of ongoing service transformation, the team were considering all options and therefore the children's transport service required an extension. He described the complexity of the service as it was demand-led and ran a complex schedule. He stated that the Council needed to ensure the best outcome for the service and residents, which was why an extension to the current framework was being proposed.

Councillor Carter thanked Councillor Johnson for attending the Children's Services Overview and Scrutiny Committee last night, and felt that a good conversation had been held regarding statutory services and children's transport. He stated that the Children's Services Overview and Scrutiny Committee had agreed all recommendations. The Leader stated that this report allowed officers the opportunity to get the service right, and provided a check and challenge process. He thanked Councillor Carter for his attendance at Cabinet.

**RESOLVED: That Cabinet:**

**1. Agreed that the Director of Children's Services, in consultation with the Education Portfolio Holder, is authorised to extend any transport contracts procured under the current framework, which expire in July 2023 for a one-year period.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**125. Integrated Transport Block (ITB) Capital Programme 2023/24 and Highways Maintenance Allocation and Programme 2023/24 (Decision: 110649)**



Councillor Maney introduced the report and stated that it proposed £979,000 for the ITB and £1,383,000 for highways maintenance allocation. He stated that the ITB programme helped to deliver the Council's transport priorities, in line with the Transport Strategy, and the highways maintenance allocation was the system for ensuring roads and pavements were safe. He described how the ITB was more flexible, and this year a decision was proposed to reduce spend on Safer Routes to School and instead fund broader road strategies and road safety approaches. He stated that Safer Routes to Schools remained a Council priority. He added that a proposal for £150,000 on new electric vehicle charging was also included in the report to improve air quality in the borough. He summarised and stated that Appendix A outlined more detailed spend proposals and Appendix B outlined the highways maintenance spend details.

Councillor Abbas felt that road safety around schools was important, and questioned how the team would work to tackle issues around schools near West Thurrock Way and car cruising. Councillor Maney explained that the report proposed funding for a feasibility study on West Thurrock Way, and thanked Councillor Abbas for his support on this campaign. He stated that the feasibility study would inform future options on how to tackle road safety on West Thurrock Way, including tackling car cruising and road safety on London Road. The Leader felt that the lack of electric vehicle charging points remained an issue in Thurrock, and more electric vehicle charging stations needed to be introduced to encourage people to purchase electric vehicles. He urged the Mayor of London to rethink his plans regarding expanding ULEZ, as the facilities were not in place in Greater London and surrounding areas to support these plans. Councillor Maney echoed the Leader's comments and felt that expanding ULEZ would decrease air quality in Thurrock, and further investment in electric vehicles needed to be undertaken first.

**RESOLVED: That Cabinet:**

**1. Approved the 2023/24 ITB capital programme allocations, policy and prioritisation direction for the DfT ITB Block funding under the key Policy areas of Road Safety Engineering, Safer Routes to School, Area Intervention Programme, and EV Charging Programme (as detailed in Appendix A).**

**2. Approved the 2023/24 Highways Maintenance Block Allocation Programme (as detailed in Appendix B).**

**3. Delegated authority to the Interim Director of Place and Director of Public Realm, in consultation with the Cabinet Member for Transport and Public Safety, to make any required changes to the ITB programme and the Maintenance programme for 2023/24, within the overall programme budget, as well as other government funding allocations that may arise within the year to ensure delivery of the programme and to ensure spend of the grant allocations.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**126. Renewing Contracts with Care Home and Supported Accommodation Providers (Decision: 110650)**

Councillor Arnold introduced the report and stated that it recommended a waiver for competitive tendering. She explained that this was not unusual as Thurrock only had approximately twenty small providers. She stated that the Council had a good relationship with these providers and negotiations would continue, whilst also providing a good service to residents. Councillor Johnson questioned if the Council would need to spend additional monies if the recommendations were not approved. Councillor Arnold explained that the team would be undertaking a benchmarking exercise against other local authorities and providers. She stated that providers gave good support to residents and provided a quality service, as the majority of providers had been rated as good or excellent. Councillor Abbas queried how confident the team were that the Council were getting the best price and service. Councillor Arnold explained that the benchmarking exercise would show comparable prices. She confirmed that, in terms of service, the small providers had good relationships with services users, and this had been proven during the COVID-19 pandemic when some providers had moved into care homes full time as a support bubble.

**RESOLVED: That Cabinet:**

**1. Approved a waiver from the constitutional requirement for competitive tendering for the provision of care home services for older people, working age adults, and supported accommodation, and approved a single sourcing arrangement for new contracts for care home and supported accommodation placements commissioned by the Council.**

**2. Delegated to the S151 officer and Commissioners, in consultation with the Portfolio Holder and Corporate Director Adults, Housing and Health, the authority to award contracts for care home and supported accommodation services to meet the assessed needs and preferences of older people and working age adults.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**127. Commissioning Report - Domiciliary Care and Unpaid Carers (Decision: 110651)**

Councillor Arnold introduced the report and stated that it proposed a contract extension for two-years, as these were the largest adults social care contracts and COVID had set back data collection for base-line commissioning. She added that these contracts formed part of the Better Care Together Strategy, and therefore needed to be right, and needed to adopt a programme of

transformation.

**RESOLVED: That Cabinet:**

- 1. Agreed the proposed two-year extension to the Domiciliary Care Service until 31 March 2025.**
- 2. Agreed the proposed 18-month extension to the Out of Hours Service until 31 March 2025.**
- 3. Agreed the 6-month extension to the Bridging Service until 31 March 2024.**
- 4. Agreed a 20-month extension to the Unpaid Carers Information Advice and Support service until 31 March 2025.**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**128. Market Sustainability Plan (Decision: 110652)**

Councillor Arnold introduced the report and stated that it was exempt due to figures relating to the percentage share of contracts which could not be disclosed. She explained that it was a government requirement to submit a Market Sustainability Plan, which outlined future issues and areas of destabilisation for service provision, such as older staff retiring and fewer young people joining adults social care for their careers. She stated that the report also listed potential solutions to these problems such as upskilling and training young staff members. She stated that the report had been presented at the Health and Wellbeing Overview and Scrutiny Committee, and Councillor Potheary had commented on the information missing at page 466, but the Committee had been happy to agree the recommendations. The Strategic Lead Adults Social Care explained that the figures related to annual uplift, which had not been included in the overview and scrutiny or Cabinet reports, as these could not be communicated until agreed by the S151 officer.

Councillor Johnson questioned if the Market Sustainability Plan would be published on the website, or would remain an exempt document. The Strategic Lead Adults Social Care explained that the document would be submitted to government, but the detail of the uplift would not be published until it had been shared with providers.

**RESOLVED: That Cabinet:**

- 1. Agreed the attached Market Sustainability Plan and subsequent submission to the Department of Health and Social Care (DHSC).**

*Reason for decision: as outlined in the report  
This decision is subject to call-in*

**The meeting finished at 8.35 pm**

Approved as a true and correct record

**CHAIR**

**DATE**

**Any queries regarding these Minutes, please contact  
Democratic Services at [Direct.Democracy@thurrock.gov.uk](mailto:Direct.Democracy@thurrock.gov.uk)**

<b>14 June 2023</b>	<b>ITEM: 10</b>
<b>Cabinet</b>	
<b>Appointments to Outside Bodies, Statutory and other Panels</b>	
<b>Wards and communities affected:</b> None	<b>Key Decision:</b> Non-key
<b>Report of:</b> Councillor Andrew Jefferies, Leader of the Council	
<b>Accountable Assistant Director:</b> N/A	
<b>Accountable Director:</b> Asmat Hussain, Director of Law and Governance, and Monitoring Officer	
<b>This report is</b> Public	

## Executive Summary

This report requests the Cabinet to consider the nominations made by Group Leaders to Outside Bodies, Statutory and Other Panels for those appointments that are to be made by the Cabinet.

### 1. Recommendation(s)

- 1.1 That the nominations to Outside Bodies, Statutory and Other Panels be approved, as set out in Appendix 1 to this report (to be tabled when nominations are received).**

### 2. Introduction and Background

- 2.1 Both the Full Council and the Cabinet have powers to appoint Members, officers and others to serve on Outside Bodies in a variety of capacities. Chapter 12, Part 2, of the Council’s Constitution provides details of those Outside Bodies, Statutory and Other Panels where appointments are to be made by either Full Council or by the Cabinet.

### 3. Issues, Options and Analysis of Options

- 3.1 Nominations will be sought from Group Leaders for the appointments to Outside Bodies, Statutory and Other Panels that are required to be made by the Cabinet. Those nominations are set out in **Appendix 1** to this report, which will be tabled when nominations have been received.

- 3.2 Any changes to the appointments made will require the approval of the appointing body, be this Full Council or Cabinet.
- 3.3 There is an expectation that Members appointed to represent the Council on Outside Bodies must report back to the Council at least annually.
- 3.4 Guidance for Councillors and Officers on Outside Bodies can be found Chapter 12, Part 2, Appendix A of the Constitution. This has been included in this report as **Appendix 2**.

#### **4. Reasons for Recommendation**

- 4.1 The Cabinet should ensure that it continues to nominate representatives to sit on Outside Bodies, Statutory and other Panels so that its interests can be properly represented, together with those of the wider community.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 In the course of seeking nominations, consultation has been undertaken with the Leaders of each of the political groups represented on the Council.

#### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 It is important for the Council to nominate to such bodies in order to ensure that it continues to represent the interests of both the Authority and the wider community.

#### **7. Implications**

##### **7.1 Financial**

Implications verified by: **Dammy Adewole**  
**Senior Management Accountant**

There are no financial implications arising from this report.

##### **7.2 Legal**

Implications verified by: **Asmat Hussain**  
**Director of Law and Governance, and**  
**Monitoring Officer**

This report must be considered in line with Chapter 12, Part 2 Outside Bodies of our Constitution. Different duties and responsibilities will apply depending on the individual councillor's role on the outside body. Councillors appointed to outside bodies will need to be clear as to whether their duty is to the

Council or to the outside body and will need to identify any potential conflicts of interest.

### 7.3 **Diversity and Equality**

Implications verified by: **Becky Lee**

**Team Manager – Community Development and Equalities**

The Council is under a statutory duty to ensure that equality and diversity is a key part of our decision making process. Therefore attention is drawn to the importance of ensuring that appointments to Outside Bodies, Statutory and Other Panels are underpinned by appropriate training on the statutory equality framework.

### 7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

- None.

### 8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None.

### 9. **Appendices to the report**

- Appendix 1 - Nominations of political groups to Outside Bodies, Statutory and Other Panels
- Appendix 2 – Guidance for Councillors and Officers on Outside Bodies: Thurrock Council Constitution, Chapter 12, Part 2, Appendix A

### **Report Author:**

Lucy Tricker & Kenna-Victoria Healey

Senior Democratic Services Officers

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# **Cabinet Appointments to Outside Bodies, Statutory and Other Panels 2023/2024**

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Organisation	No. to be appointed by Cabinet	Appointees
<b>Anglian (Eastern) Regional Flood &amp; Coastal Committee</b> (1 seat held jointly, bi-annually, with Southend)	1	<b>1. Councillor</b> (2021 – Councillor Collins)
<b>Association for Public Services Excellence</b>	1	<b>1. Councillor</b> (2021 – Councillor Gledhill)
<b>Mid and South Essex NHS Foundation Trust Council of Governors</b>	1	<b>1. Councillor</b> (2022 – Councillor Polley)
<b>Essex Partnership for Flood Management</b>	1	<b>1. Councillor</b> (2021– Councillor Collins)
<b>Essex County Traveller Unit</b>	1	<b>1. Councillor</b> (2021 – Councillor Gledhill)
<b>Impulse Leisure</b> (One appointment to be made by the Cabinet. A further appointment is required to be made by the Council.)	1	<b>1. Councillor</b> (2022 – Councillor Jefferies)
<b>Local Government Association</b>	2	<b>1. Councillor</b> (2021 – Councillor Johnson)  <b>2. Councillor</b> (2021 – Councillor Abbas)
<b>Opportunity South Essex</b>	1	<b>1. Councillor</b> (Councillor Coxshall - appointed for a 5-year term in 2021)
<b>South East Local Enterprise Partnership – Strategic Board</b>	1	<b>1. Councillor</b> (2021 – Councillor Coxshall)
<b>South East Local Enterprise Partnership – Accountability Board</b>	1	<b>1. Councillor</b> (2021 – Councillor Coxshall)
<b>Thurrock Arts Council</b>	1	<b>1. Councillor</b> (2021– Councillor Watson)
<b>Thurrock Sports Council</b>	1	<b>1. Councillor</b>

Organisation	No. to be appointed by Cabinet	Appointees
		(2021 – Councillor Jefferies)
Thames Estuary 2100 Strategic Programme Board	1	<b>1. Councillor</b> (2021 – Councillor Coxshall)

### STATUTORY AND OTHER PANELS TO BE APPOINTED

Organisation	No. to be appointed by Cabinet	Appointees
Thurrock Community Safety Partnership	1	<b>1. Councillor</b> (2021 –Councillor Gledhill)
ASELA	1	<b>1. Councillor</b> (2021 –Councillor Coxshall) (Appointee to be a Cabinet Member)
High House Production Park	1	<b>1. Councillor</b> (Councillor Coxshall - appointed for a 4-year term)

## **Appendix A – A Guide to the Law for Councillors and Officers on Outside Bodies**

### **1. Introduction**

- 1.1 This advice is for Councillors and Officers who represent the Council on organisations outside the Council, whether as a company director, the trustee of a charity or a representative on a management Committee. It simply sets out some of the most important responsibilities. It is not meant to be a comprehensive guide. If councillors or Officers have queries then the Assistant Director of Law and Governance and Monitoring Officer would be happy to advise in the circumstances of your particular concern.

### **2. General**

- 2.1 There are some general provisions which apply to Councillors and Officers who act in the role of company director, trustee or member of an incorporated body, such as the Committee of management of an unincorporated voluntary organisation.
- 2.2 Members are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and Officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or Officer is partaking in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There will be a fine line to tread between his/her duty to the organisation and to the Council.

#### **Compliance with the Code on the outside body**

- 2.3 The Code of Conduct requires Members acting as the authority's representative on another body to comply with the authority's Code of Conduct, unless it conflicts with any legal obligations arising as a consequence of service on that body.
- 2.4 Some outside bodies may require the Councillor to treat the body's business as confidential. This may militate against the idea of assisting the public accountability of the body (but accountability may be through some channel other than the Council), but the Councillor will be bound by that confidentiality.

#### **Consultative or advisory bodies**

- 2.5 A Member could be appointed to an external Committee which advises the Council on various issues. Difficulties have arisen where that Member champions a position taken by the external Committee and a challenge has succeeded on the grounds of bias and of a closed mind.

#### **Application of the Code to Members**

- 2.6 Under the Code you must declare in your Register of Interests your Membership or position of control or management in any other body to which you have been appointed or nominated by the Council. You therefore will have a personal interest in any business considered by the Council affecting that body. If the interest is personal and arises solely from your Membership of, or position of control or management on that body you need

only declare the interests if and when you speak on the matter. You can remain in the meeting and vote.

- 2.7 If your interest is a disclosable pecuniary you must declare it and may only speak at the meeting after being granted a dispensation to allow you to speak in accordance with the Code of Conduct, You must then leave the meeting unless the dispensation allows you to remain. You cannot vote on the matter unless with a grant of a dispensation in accordance with the Members' Code of Conduct.
- 2.8 If a Member does not have a disclosable pecuniary interest, he/she may stay, speak on the item and vote.

### **Predisposition**

- 2.9 It is not a problem for Councillors to be predisposed. Predisposition is where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the Council meeting.
- 2.10 This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

### **Predetermination or bias**

- 2.11 Predetermination or bias can lead to problems. It is where a Councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.
- 2.12 Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 2.13 Rarely will Membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a Councillor is involved in making.
- 2.14 There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.
- 2.15 When considering whether there is an appearance of predetermination or bias, Councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the Councillor had predetermined the issue or was biased?
- 2.16 However, when applying this test, they should remember that it is legitimate for a Councillor to be predisposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.

2.17 Predetermination or bias may arise:

- (a) Where the Councillor has a close connection to someone affected by the decision
- (b) Where the Councillor has allowed an improper involvement of someone with an interest in the outcome
- (c) Prior involvement such as hearing an appeal from their own decision
- (d) Comments made prior to decision which suggest that the Councillor has already made up their mind.

2.18 The Councillor or Officer, in acting as a director/trustee or Member of a management Committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or Officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes but not to vote simply in accordance with them.

2.19 The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.

2.20 Councillors and Officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

### 3. Companies

3.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.

3.2 Companies limited by shares are those which have a share capital (for example, 1,000 shares of £1 each). Each Member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each Member agrees that in the event of the company being wound up, they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector, particularly where charitable status is sought.

3.3 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the Rules each company has to govern its internal management). Sometimes even though a company has been incorporated, the directors may be referred to as Members of the Committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### **Directors' Duties**

- 3.4 A director is an agent of the company. His/her prime duties are as follows:
- (a) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Taxpayers of Thurrock.
  - (b) A general duty of care and skill to the company. So long as the company remains solvent, a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert but is expected to use due diligence and to obtain expert advice if necessary. But note that if the company become insolvent, the Court may expect that the director brings an appropriate level of skill, competence and experience to the job.
  - (c) Like a Councillor in respect of Council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and treads a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with the Council mandate. To do so would be a breach of duty.
  - (d) No conflict of interests is allowed. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the only proper way for the conflict to be resolved is for the Councillor or Officer to resign either from the company or from the Council.
  - (e) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
  - (f) Directors must ensure compliance with the Companies Acts in relation to keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director. They must also ensure compliance with other legislation – for example, health and safety, if the company employs staff or employs contractors.

### **Directors' Liabilities**

- 3.5 The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear.
- 3.6 A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). Those directors knowingly causing



the company to act beyond the activities set out in the Memorandum will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.

- 3.7 A director may also be liable for breach of trust if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- 3.8 In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- 3.9 If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- 3.10 If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position, he/she could be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.
- 3.11 A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- 3.12 All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company.
- 3.13 A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- 3.14 Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

#### **Local Authorities (Companies) Order 1995 (as amended)**

- 3.15 This Order, made under the Secretary of State's powers contained in Part V, Local Government and Housing Act 1989, sets out Rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of Rules apply. [Note: Part V has been

repealed; its coming into effect is awaited. This section will be reviewed as soon as the repeal is effective].

- 3.16 "Regulated companies" are so defined if they are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.
- 3.17 The original concept of controlled, influenced and minority interests in companies were introduced by the 1989 Act. "Influenced" means at least 20% local authority interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company is located on local authority land leased or sold for less than best consideration. "Controlled" means over 50% local authority interests, and "minority" less than 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".
- 3.18 Councillors or Officers who are directors of outside companies to which they have been nominated by the Council are under the following obligations:
- (a) (Councillors only) that the remuneration they receive from the company should not exceed that received from the Authority, and should be declared
  - (b) (Officers only) that they shall not receive any fee or reward other than their Council salary, unless so agreed with the Council
  - (c) to give information to Councillors about their activities as required by the local authority (save for confidential information), and
  - (d) to cease to be a director immediately upon disqualification as a Councillor or termination of their employment by the Council

#### **4. Charities**

- 4.1 To be a charity, an organisation must operate for a charitable purpose. There are four charitable purposes:
- (a) the relief of poverty and human suffering
  - (b) the advancement of education
  - (c) the advancement of religion
  - (d) another purpose for the benefit of the community
- 4.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- 4.3 To register as a charity the organisation must submit its completed Constitution (usually Certificate of Incorporation and the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable, it will be registered as such.

4.4 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee. Trustees of a charity retain personal liability, and can only delegate to the extent that the Constitution authorises them so to do. There are a number of useful publications produced by the Charity Commission available on [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

### **Trustees' Duties**

4.5 Trustees must take care to act in accordance with the Constitution and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, and should note the particular requirements of the Acts in respect of land transactions.

4.6 Trustees must not make a private profit from their position. They cannot receive remuneration without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent businessperson would show. Higher standards are required of professionals and in relation to investment matters.

4.7 Charitable trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent.

4.8 If charitable income exceeds £10,000, the letters, adverts, cheques, etc., must bear a statement that the organisation is a registered charity.

4.9 Trustees are under a duty to ensure compliance with all relevant legislation – for example, in relation to tax and land matters.

### **Trustees' Personal Liability**

4.10 If in doubt, always consult the Charity Commissioners. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.

4.11 Generally though, a trustee incurs personal liability if he/she:

- (a) acts outside the scope of the trust deed
- (b) falls below the required standard of care
- (c) acts otherwise than in the best interests of the charity, in a way which causes loss to the charity fund
- (d) makes a personal profit from the trust assets

4.12 In such circumstances the trustee will incur personal liability for losses incurred.

4.13 Trustees of a trust can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. The Constitution will normally provide for trustees to be given an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the trust, they should seek an indemnity from their successors. If the charity is a company, the

trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course, but will be personally liable if they commit a breach of trust.

- 4.14 Trustees may be liable to fines if they do not comply with the duty to make returns, etc.

## **5. Committees of Management**

5.1 Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their Members. The Rules governing the Members' duties and liability will be set out in a Constitution, which is simply an agreement between the Members as to how the organisation will operate. Usually the Constitution will provide for a management Committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.

5.2 Property will have to be held by individuals as the organisation has no existence of its own.

### **Duties**

5.3 Broadly, Management Committee Members must act within the Constitution, and must take reasonable care in exercising their powers.

### **Liabilities**

5.4 Generally, the Management Committee Members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee Members are personally liable for the shortfall.

5.5 If one person is appointed by the Constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the Members who have joint liability for the agent's actions.

5.6 Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute – for example, the payment of employees' tax, etc.

## **6. Indemnities**

6.1 Councillors and Officers who are directors cannot be indemnified by the company against liability arising out of negligence, default or breach of duty or trust. However, the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. Equally, in making the appointment, the Council can offer an indemnity against losses which the Councillor may suffer through acting conscientiously as a director. But note that it is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, and default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.

- 6.2 Under the Local Government Act 2000, it is now possible for the Council to provide indemnities for Councillors or Officers when appointing them to act as directors, and to buy insurance to cover any losses which they may suffer through acting conscientiously as a director. However, the first recourse would be to ensure that the company had provided such insurance.
- 6.3 In the case of Councillors and Officers appointed by the Council to be a Trustee of a charity, an indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud, etc. There will no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners first, unless the trust deed allows it.
- 6.4 Councillors and Officers appointed by the Council to Committees of Management ("unincorporated associations"), will be entitled to an indemnity if they act in accordance with the Constitution of the Committee of Management and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium, it must be permitted by the Constitution of the Committee of Management.
- 6.5 In accordance with Chapter 9, Part 4 of this Constitution, the Council will indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.

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<b>14 June 2023</b>	<b>ITEM: 12</b> <b>Decision: 110654</b>
<b>Cabinet</b>	
<b>Award of Contract for Occupational Therapy and Independent Mobility Assessment Service</b>	
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key
<b>Report of:</b> Cllr George Coxshall, Cabinet Member for Health, Adults Social Care, Community & Public Protection	
<b>Accountable Assistant Director:</b> Les Billingham, Assistant Director, Adult Social Care and Community Development	
<b>Accountable Director:</b> Ian Wake, Acting Director of Adult Social Care	
<b>This report is</b> Public with an exempt appendix which is exempt due to information relating to the financial or business affairs of any particular person (including the authority holding that information)	
<b>Date of notice given of exempt of confidential report:</b> 6 <sup>th</sup> June 2023	

## Executive Summary

This paper (and attached appendices (exempt from publication) presents the recommendations of the outcome of the open tender to seek a Provider to:

- Undertake Occupational Therapy assessment for items or adaptations under £1,000 to eligible individuals as defined by the Care Act (2014) and;
- Independent Mobility Assessments pursuant to the Chronically Sick and Disabled Persons Act (1970) and the Equality Act (2020).

The Occupation Therapy and Independent Mobility Assessment Services need to be commissioned to facilitate high quality outcome focused assessments for individuals eligible for non-specialist Occupational Therapy (OT support) and Independent Mobility Assessments (IMAs), via one-to-one assessments and clinics, for the Passenger Transport Services. Additionally the provision of these services discharges the Authority’s legal duties under the afore mentioned legislation.

The re-procurement exercise via open tender was previously recommended by Health and Wellbeing Overview and Scrutiny Committee, as well as Cabinet (decision 110626) and will remain at the existing budgeted amount of £99,360 per annum.

## **1. Recommendation(s)**

- 1.1 That Cabinet agrees with Procurement's recommendation to appoint the winning provider to fulfil the obligations under the contract to provide an occupational therapy and independent mobility assessment service.**

## **2. Introduction and Background**

- 2.1 Adult Social Care adopts a strength-based approach, focusing on the strengths and abilities of the individual and aims to connect them to support from friends, family and the wider community. By adopting an ethos of providing the right care at the right time in the right place, this equipment services enables individuals to remain at home and part of their local communities.
- 2.2 The current contract is held by Inclusion.Me for the last 5 years costing £99,360 per annum, and the contract price has not increased during this period. During 2021/22 504 assessments were undertaken from 594 referrals, of which 96.5% had outcomes completed and submitted within 2 working days.

## **3. Issues, Options and Analysis of Options**

**There are two options considered below:**

### **3.1 Accept Procurement's recommendation to award (recommended).**

- 3.11 This would appoint the Provider that has been deemed the most appropriate via an open competitive tender process (Procurement report in section 9) to discharge it's duties under the Care Act (2014) to undertake Occupational Therapy assessments and Independent Mobility Assessments under the Chronically Sick and Disabled Persons Act (1970) and the Equality Act (2020).

### **3.2 To reject Procurement's recommendation to award (not recommended).**

- 3.2.1 The rejection of the recommendation would risk a breakdown in service provision as the Authority would either need to seek an extension from the existing Provider and / or undertake another tender exercise.
- 3.2.2 It could also result in a potential challenge to the Authority from tenderers involved in the procurement process. Any successful challenge could lead to financial remuneration to some or all of the bidders.

## **4. Reasons for Recommendation**

- 4.1 This contract has been via an open procurement process and all organisations willing and able to bid for this contract have had the opportunity to do so. Therefore, as the contract will be expiring and this provision is required to fulfil our statutory requirements under the Care Act (2014), it would be appropriate to appoint the winning bidder

## **5. Consultation (including Overview and Scrutiny, if applicable)**



5.1 Not applicable.

## **6. Impact on corporate policies priorities, performance and community impact**

6.1 The contract to provide an Occupational Therapy and Independent Mobility Assessment Service:

*People – a borough where people of all ages are proud to work and play, live and stay.*

This not only fulfils the Authorities obligations under the Care Act (2014) to prevent, reduce and delay but also links in to its overarching objectives to keep vulnerable people within their local communities to provide better, longer terms outcomes.

## **7. Implications**

### **7.1 Financial**

Implications verified by: **Mike Jones**  
**Strategic Lead Finance Corporate Finance**

The funding for the provision of the contract will be contained within the directorates existing budget allocation.

### **7.2 Legal**

Implications verified by: **Mark Bowen**  
**Interim Project Lead - Legal**

Following the previous report, a lawful and compliant procurement process has been undertaken and the recommendation proposes an award to the tenderer who taking price and quality into account delivered the best value for money as assessed under the contract evaluation procedure. The award of the contact will facilitate the Council discharging its duties under the Care Act 2014.

### **7.3 Diversity and Equality**

Implications verified by: **Rebecca Lee**  
**Team Manager Community Development**  
**Adults Housing and Health**

The executive summary of the report sets out the responsibilities of the authority to provide the Occupational Therapy and Independent Mobility Assessment service in line with the Care Act (2014), Chronically Sick and Disabled Persons Act (1970) and the Equality Act (2010).

Social value has been considered as part of the commissioning process for this service and will be monitored as part of the standard contract review cycle with the agreed supplier.

- 7.4 **Other** implications (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder and impact on Looked After Children

N/A

8. **Background papers used in preparing this report** (include their location and identify whether any are exempt or protected by copyright):

N/A

9. **Appendices to the report**

Appendix 1 – Procurement Report OT and Mobility Service (exempt)

**Report Author:**

Ian Kennard

Commissioning Manager - Adults Housing and Health

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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<b>14 June 2023</b>	<b>ITEM: 13</b> <b>Decision: 110655</b>
<b>Cabinet</b>	
<b>Award of Contract to Supply, Install, Maintain &amp; Repair Telecare Equipment</b>	
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key
<b>Report of:</b> Cllr George Coxshall, Cabinet Member for Health, Adults Social Care, Community and Public Protection	
<b>Accountable Assistant Director:</b> Les Billingham, Assistant Director, Adult Social Care and Community Development	
<b>Accountable Director:</b> Ian Wake, Corporate Director of Adults, Housing, and Health	
<b>This report is</b> Public with an exempt appendix which is exempt due to information relating to the financial or business affairs of any particular person (including the authority holding that information)	
<b>Date of notice given of exempt of confidential report:</b> 6 <sup>th</sup> June 2023	

## Executive Summary

This paper (and attached appendices (exempt from publication)) presents the recommendations of the outcome of an open tender exercise to seek a provider to supply, install and repair telecare equipment under £1,000 to eligible individuals as defined by the Care Act (2014).

These services help support people to live independently in their own home, while minimising risks such as falls, gas leaks etc. and is intrinsically linked to The Care Act (2014) responsibility to reduce, prevent and delay the need for and escalation of care interventions.

The re-procurement exercise via open tender was previously recommended by Health and Wellbeing Overview and Scrutiny Committee, as well as Cabinet (decision 110625). The budget envelope for the new contract remains at £107,364 per annum for up to six years. This mirrors the cost of the existing contract.

### 1. Recommendation(s)

- 1.1 That Cabinet agrees with Procurement’s recommendation to appoint the winning provider to fulfil the obligations under the contract to supply, install, maintain and repair telecare equipment.

## **2. Introduction and Background**

- 2.1 Adult Social Care adopts a strength-based approach, focusing on the strengths and abilities of the individual and aims to connect them to support from friends, family and the wider community. By adopting an ethos of providing the right care at the right time in the right place, this equipment service enables individuals to remain at home and part of their local communities.
- 2.2 The current contract is held by Red Alert at a cost of £107,364 per annum and issues over 700 pieces of telecare equipment per annum, while having over 2600 pieces of actively used pieces of equipment at any one time. This budget envelope will continue for the lifetime of this new contract (up to 6 years).
- 2.3 The contract for these services is to increase focus on early intervention and prevention via the Technology Enabled Care (TEC) programme, as this has help mitigate demand and the additional impact that the pandemic has placed upon the service.
- 2.4 Consideration must be given to Digital Transformation as more than 95% of current base units and peripherals deployed are reliant on the Public Switched Telephone Network (PSTN) which is being phased out, as a national initiative, by December 2025. The contract will enable the Authority to embed digital device piloting and testing into the service, to enable Subject Matter Experts to identify cost effective solutions to meet future needs and requirements.

## **3. Issues, Options and Analysis of Options**

**There are two options considered below:**

### **3.1 Accept Procurement's recommendation to award (recommended).**

- 3.1.1 This would appoint the tenderer that has been deemed the most appropriate via an open competitive tender process (Procurement report in section 9) to discharge its duties under the Care Act (2014) to supply Assistive Technology valued under £1,000.

### **3.2 To reject Procurement's recommendation to award (not recommended).**

- 3.2.1 The rejection of the recommendation would risk a breakdown in service provision as the Authority would either need to seek an extension from the existing Provider and / or undertake another tender exercise.
- 3.2.2 It could risk a potential challenge to the Authority from tenderers involved in the procurement process. Any successful challenge could lead to financial remuneration to some or all of the tenderers.

## **4. Reasons for Recommendation**

- 4.1 This contract has been via an open procurement process and all organisations willing and able to bid for this contract have had the opportunity to do so.

Therefore, as the contract will be expiring and this provision is required to fulfil our statutory requirements under the Care Act (2014), it would be appropriate to appoint the winning bidder.

## **5. Consultation (including Overview and Scrutiny, if applicable)**

5.1 Not applicable.

## **6. Impact on corporate policies priorities, performance and community impact**

6.1 The contract to Supply, Install, Maintain & Repair Telecare Equipment:

*People – a borough where people of all ages are proud to work and play, live and stay.*

This not only fulfils the Authorities obligations under the Care Act (2014) to prevent, reduce and delay but also links into its overarching objectives to keep vulnerable people within their local communities to provide better, longer terms outcomes.

## **7. Implications**

### **7.1 Financial**

Implications verified by: **Mike Jones**  
**Strategic Lead Corporate Finance**

The funding for the provision of the contract was set at £107,364, and formed part of the 2022/23 ASC base budget. This agrees with the value quoted under para 2.2.

The recommended option within paragraph 3.1 represents that which is most financial viable. The alternative options will result in both direct and or indirect additional financial costs to the department, and do not present any wider long term financial benefit to the Council.

### **7.2 Legal**

Implications verified by: **Mark Bowen**  
**Interim Head of Legal Services**

The recommendation if agreed is for a procurement process to enable a statutory duty to be discharged and is legally sound.

### **7.3 Diversity and Equality**

Implications verified by: **Rebecca Lee**  
**Team Manager Community Development**  
**Adults Housing and Health**

The provision of this contract will support Council to uphold responsibilities set out in the Equality Act 2010 and Public Sector Equality Duty. The supply of equipment to support residents is also in line with regulations set out in the Care Act (2014) and the Children and Families Act (2014).

Social value has been considered as part of the commissioning process for this service and will be monitored as part of the standard contract review cycle with the agreed supplier.

- 7.4 **Other** implications (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder and Impact on Looked After Children

N/A

8. **Background papers used in preparing this report** (include their location and identify whether any are exempt or protected by copyright):

N/A

9. **Appendices to the report**

Appendix 1 – Procurement Report Telecare Equipment

**Report Author:**

Ian Kennard

Commissioning Manager Adults Housing and Health



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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