

## **Minutes of the meeting of Council held at Herefordshire Council Offices, Plough Lane, Hereford, HR4 0LE on Friday 29 July 2022 at 10.00 am**

**Present:** Councillor Sebastian Bowen (chairperson)  
Councillor Kema Guthrie (vice-chairperson)

**Councillors:** Graham Andrews, Paul Andrews, Chris Bartrum, Christy Bolderson, Dave Boulter, Tracy Bowes, Pauline Crockett, Clare Davies, Gemma Davies, Barry Durkin, Toni Fagan, Elizabeth Foxton, Carole Gandy, John Hardwick, John Harrington, Liz Harvey, Jennie Hewitt, Kath Hey, David Hitchiner, Phillip Howells, Helen I'Anson, Terry James, Peter Jinman, Tony Johnson, Graham Jones, Mike Jones, Jim Kenyon, Jonathan Lester, Trish Marsh, Bob Matthews, Jeremy Milln, Felicity Norman, Roger Phillips, Tim Price, Nigel Shaw, Louis Stark, John Stone, David Summers, Elissa Swinglehurst, Kevin Tillet, Diana Toynbee, Yolande Watson and William Wilding

**Officers:** Chief Executive, Chief Finance Officer, Director of Governance and Legal Services, Senior Solicitor - Governance and Major Projects and Democratic Services Manager

### **13. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Polly Andrews, Jenny Bartlett, Ellie Chowns, Mark Millmore, Ann-Marie Probert, Paul Rone, Paul Symonds and Ange Tyler.

### **14. DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **15. MINUTES**

**RESOLVED:** That the minutes of the annual meeting held on 20 May 2022 be confirmed as a correct record and signed by the Chairman.

### **16. CHAIRMAN AND CHIEF EXECUTIVE'S ANNOUNCEMENTS**

Council noted the Chairman and Chief Executive's announcements as printed in the agenda papers.

### **17. QUESTIONS FROM MEMBERS OF THE PUBLIC (Pages 7 - 12)**

A copy of the public questions and written answers, together with supplementary questions asked at the meeting and their answers, is attached to the minutes at appendix 1.

### **18. QUESTIONS FROM MEMBERS OF THE COUNCIL**

There were no questions from members of the Council.

### **19. LEADER'S REPORT TO COUNCIL**

Council received and noted the Leader's Report which provided an update on the work of the cabinet since the previous ordinary meeting of Council in January 2022. The Leader presented his report to Council.

Council questioned the Leader and the following actions were raised:

- to provide an update on Balfour Beatty's assessment of the safety requirements of the bridge at Buckton;
- to provide a timeline for the allocation of full staffing resource to the public rights of way (PROW) and traffic regulation order (TRO) teams;
- to invite the local MPs to meet with councillors after a forthcoming meeting of the full Council to discuss phosphate concerns;
- to provide a written response providing detail of the number of wetlands sites that were proposed and the cost involved in the purchase of land;
- to provide a written response on staff stability within children's social worker teams and the number of social workers a child may expect to have over a 12 month period. The response to include benchmarking data for a comparison with other local authorities of the current recruitment and retention of social workers nationally;
- to provide a written response on the incidence of fabricated or induced illness (FII) in Herefordshire;
- to provide a written response concerning the structure of the children's services legal team and the use of legal executives in place of solicitors;
- to provide a written response concerning plans to reduce the number of interim appointments and recruit to permanent positions; and
- to provide a written response on planning for the location of Ukrainian refugees which takes account of the provision of local services.

## **20. BROOKFIELD SPECIAL SCHOOL CAPITAL IMPROVEMENT PROGRAMME – RE-PROFILE OF SPEND**

Council considered a report by the cabinet member for children and families to agree an in-year adjustment to the capital programme, for capital improvements to The Brookfield Social Emotional Mental Health special school. The cabinet member children and families introduced the report and proposed the recommendation.

Council debated the report and the recommendation.

The cabinet member finance, corporate services and planning seconded the recommendation in the report.

The recommendation was put to the vote and was carried.

**RESOLVED – that:**

- a) Full Council agrees an in-year adjustment to the capital programme, for capital improvements to The Brookfield Special School as agreed by Cabinet on 21 July 2022 to be completed within a re-profiled budget of £5m.**

## **21. STRONGER TOWNS PROJECT FULL BUSINESS CASE SUBMISSION**

Council considered a report by the cabinet member commissioning, procurement and assets to approve an adjustment to the capital programme to fund the Hereford Museum and Art Gallery project and the Maylords Orchards Library and Learning Resource

Centre project. The cabinet member commissioning, procurement and assets introduced the report and proposed the recommendation.

Council debated the report and the recommendation.

The cabinet member health and adult wellbeing seconded the recommendation in the report.

The recommendation was put to the vote and was carried.

**RESOLVED – that:**

- a) **Council approves an adjustment to the capital programme to fund up to £8m for the Hereford Museum and Art Gallery project and up to £0.5m for the Maylord Orchards Library and Learning Resource Centre project from the capital receipts reserve.**

## 22. NOTICES OF MOTION UNDER STANDING ORDERS

### **Motion – Cabinet Commission on Phosphates**

Councillor Toni Fagan proposed the motion.

Councillor Jennie Hewitt seconded the motion.

Council debated the motion.

An alteration to the motion was raised. The following clarifications were raised:

- Greater precision in paragraph 1 regarding the river systems within the scope of the motion;
- Greater context and qualification of the cumulative impact of development, in paragraph 1, to include specific mention of housing, agricultural and industrial development;
- To remove the wording *of agency partners* from the introduction to paragraph 2; to remove any confusion as to the bodies responsible for asking the Environment Agency and Natural England to undertake the actions listed in the paragraph;
- To include in paragraph 3 a further element for consideration in the update of the Local Plan; by including a bullet point *decommission of intensive poultry units that have reached the end of useful life*; and
- To include in paragraph 4 mention of the need to co-ordinate with Powys County Council.

The alterations were acceptable to the Proposer and Secunder of the motion and were therefore incorporated into the proposed motion.

In summary there was support across the Council for the identified areas of urgent action for inclusion in the remit of the proposed Cabinet Commission on Phosphates, as altered by the points of clarification above.

Councillor Fagan closed the debate.

The motion, as altered by the points of clarification above, was put to the vote and was carried.

**RESOLVED – That:**

**We welcome all the actions that Herefordshire Council and other statutory partners have taken and continue to take to address the issue of phosphate over-loading of the River Wye SAC.**

**As scientific research now exists which indicates that further impactful and coordinated responses are required to save the river catchment from permanent eutrophication, this motion calls upon the executive to:**

**Consider including the following areas of urgent action in the remit of the proposed Cabinet Commission on Phosphates:**

- 1. Request of government that:**
  - the new Minister in charge of Defra clarifies what additional evidence they require before they would be prepared to reconsider the Council's Water Protection Zone request for the Wye;
  - DEFRA commission the catchment-wide appraisal of nutrient flows in the Wye (and all other river systems within Herefordshire) that will inform and enable consideration of the cumulative impact of housing, agricultural and industrial development.
  
- 2. Request that:**
  - the Environment Agency improve the effectiveness of their regulatory and enforcement actions and their work with partners, to deliver best practice in sewerage treatment and manure management and to encourage and support the ongoing work of compliant farm businesses.
  - Natural England update their current (2011) River Wye water quality data in relation to the SSSI and SAC targets in a timeframe which is aligned to the current update of the Herefordshire Local Plan; and provide guidance on appropriate conditioning of permissions to achieve the necessary reduction targets.
  
- 3. Identify now how best to use the update of the Local Plan to:**
  - recognise and address proportionately the legacy and ongoing contribution to phosphate pollution made by each development sector;
  - promote and support best practice nutrient actions across all sectors;
  - encourage and incentivise catchment restoration through alternative, restorative and regenerative land use; and
  - decommission intensive poultry units that have reached the end of useful life.
  
- 4. Using the 'precautionary principle' explore immediately the adoption of a planning position statement for all future development which accurately reflects the sector risks identified in research; and reinstating the consideration of '*cumulative impact*', in co-ordination with Powys County Council, to ensure that the Supplementary Planning Document on Agricultural Development, which is already in progress, enables officers to exercise the full extent of the council's planning powers in these regards.**
  
- 5. Consider urgently how data sharing, data management and data visualisation can support science-led and evidence-based decision-making at all levels and across all stakeholders.**

**Appendix 1 - Questions from members of the public**

Question Number	Questioner	Question	Question to
PQ 1	Ms Liddle, Ledbury	<p>In Herefordshire Council’s guidance for schools on peer on peer sexual abuse, there is NO information at all as to HOW the Human Rights Act applies. Specifically, there is no mention of Article 3 or any explanation of the substantive and procedural obligations on schools under Article 3. The public has set out its concerns that this lack of guidance is resulting in victims, mainly girls, being denied their Article 3 and Article 8 rights and suffering avoidable harm.</p> <p>The CEO recently confirmed that Herefordshire Council does not intend to fill this gap in its guidance, which the public has claimed leaves girls at risk of unlawful discrimination.</p> <p>Before making this decision not to issue further guidance to schools, did Herefordshire Council undertake an Equality Impact Assessment?</p>	Cabinet member children and families
<p><b>Response:</b>                      All guidance to schools with regard to peer on peer abuse will take into account the relevant articles under the Human Rights Act and Equality legislation. Guidance is continually reviewed and follows advice and guidance on this subject from the DfE. Equality Impact Assessments are carried out when new policy or practice is developed or amended. The guidance given is not such a document. The guidance is based on the Law and guidance issued by the DfE. However, we do take account of all legislation when drafting guidance for schools.</p>			
<p><b>Supplementary question:</b>                      Was an Equality Impact Assessment undertaken when guidance on peer on peer sexual abuse was developed and can we see it?</p>			
<p><b>Response to supplementary question (cabinet member children and families):</b>                      A written response would be provided.</p> <p><i>Written response – provided 11 August 2022:</i></p> <p><b><i>A quality Impact Assessment was not carried out on the guidance given. This is not required as it is not a policy document. It is guidance given from the DfE and based on the Law. You may wish to ask the DfE if they carried out an Equality Impact Assessment when they produced their guidance.</i></b></p>			
PQ 2	Dr McLean, Leominster	<p>There is widespread concern among the public that the Director of Children’s Services and his team do not understand the substantive and procedural obligations imposed by Article 3 of the Human Rights Act on state Schools, and that as a result the advice being offered from the Council’s MASH team is deficient and failing to protect victims of sexual assault, who are mainly female.</p>	Cabinet member children and families

5

		Can the Cabinet Member please ask the Director of Children's Services to put the public's mind at rest and set out in writing, in response to this question, what he understands the procedural obligations to be on schools dealing with a credible allegation of peer on peer sexual violence, in a case where the victim has reported the case to the police but does not want to pursue the case through the criminal justice system?	
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**Response:**

Thank you for your question. I can confirm that the Director of Children's Services and the MASH team do understand the importance of following and considering the law when advising on such a sensitive and serious subject. The guidance given to schools does take account of all relevant legislation and articles under the Human Rights Act. It is for schools to consider and use this guidance at a practical level when faced with such cases. Every case will depend on its own set of facts. If a matter is not pursued through the criminal process then the guidance is available to assist schools in such cases. Schools as has been said previously can seek further support or advice should they so wish. If it is felt that a school was in breach of the Human Rights Act then any legal action or challenge would need to be made against the school as the decision taker. Furthermore we do offer advice and training to schools emphasising what we would expect them to do in cases where the Police have been informed but the victim does not wish to pursue any action.

**Supplementary question:**

A claim is made in answer to my question as follows:

" If a matter is not pursued through the criminal process then the guidance is available to assist schools in such cases"

The answer does not specify what guidance and I know that there is ZERO written guidance for schools from the Council or indeed from the Department of Education about the decision making process when a criminal case is closed, which in law MUST include a proper investigation in accordance with the procedural obligations under Article 3. The public has repeatedly asked the Director of Children's Services to demonstrate that he and his team understand and can explain to schools the substantive and procedural obligations under Article 3, which are not case specific. The Director and his team appear unable to do this, despite being asked by Members of the Public on more than one occasion. We are being asked to believe that the Children's Service is capable of offering training to schools on these matters, and we are asked to accept that when schools come to the Council for advice, that the advice takes full account of Article 3.

There is a massive credibility gap developing here. If the Director and his team are capable of advising and training schools on these matters, why will they not set out the procedural obligations under Article 3 when schools are investigating a credible allegation of sexual violence?

**Response to supplementary question (cabinet member children and families):**

Article 3 is particularly relevant to peer on peer sexual abuse in schools and there is a lack of detailed guidance around the article at national level, from the department for education (DfE), as all cases are very different. We can be more explicit in our written guidance and training for schools. A written response would be provided.

*Written response – provided 11 August 2022:*

***Your comments with regard to a proper investigation I believe relate to the procedural obligations in a criminal investigation, not those of an educational establishment. The police would carry out an investigation, if the case is then closed without any prosecution, it is the role of the school to make sure that the victim is safe from the alleged perpetrator. It is not the role of the school to continue or carry out their own investigation. The child on child guidance and multi agency guidance is available to settings. Both of which include how schools will deal with cases internally. When a criminal case is closed considerations and safety plans (which will already be in place) will be reviewed with the victim and their family. To reiterate that all cases are dealt with on a case by case basis due to the complexities of each individual***

**situation. The articles in particular article 3 that your question refers will underpin such actions and is referred to in the updated guidance for schools.**

**Please see link below for information for Herefordshire Safeguarding Boards peer on peer abuse multi-agency guidance**

- [Herefordshire Peer on Peer Abuse guidance for multi-agency professionalsFinal v1 21012022.docx \(live.com\)](#)

PQ 3	Ms Attfield, Bromyard	Since August last year, Herefordshire Council has commissioned three pieces of advice from a QC in order to better understand the legal framework operating when schools are dealing with cases of peer on peer sexual violence. The advice has cost over £6,000 and would have been an excellent investment had the advice received by the Council been passed on to Herefordshire schools. However, since receiving the advice the Council has not updated the guidance for schools to include information received from the QC about the application of Article 8 of the Human Rights Act, and detailed information about the legal basis for excluding those against whom credible allegations have been made. What is the Council's rationale for not sharing this helpful and clear advice from the QC with schools?	Cabinet member children and families
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**Response:**

Thank you for your question and your helpful challenge. The guidance given to schools with regard to peer on peer abuse is reviewed and will always be amended should the law or government guidance change. We are satisfied that schools have all the most up to date guidance available on this sensitive subject and that covers the relevant Articles under the Human Rights Act and any Equalities legislation. Having said this we accept that there is always room to improve and we shall be considering the article mentioned in your question and others again to make sure that schools do understand their significance when applying the guidance to a particular set of facts. It is important to highlight that the Council provides training to schools on safeguarding which covers peer on peer abuse. Schools can seek advice at any time from this Council or indeed any other body should they need this in relation to any case that they may be faced with. We will take account of the advice from the QC.

**Supplementary question:**

You've said in your reply that you're satisfied that schools have all the most up to date guidance available. However, the Council received clear QC opinion on the relevant HRA Articles, and this is not reflected in the guidance so by definition it cannot be up to date. A school would not be able to understand the significance when applying the guidance, without the inclusion of these important issues. It is difficult to comprehend the Council's resistance to commissioning an update of its guidance to schools, given that it has already obtained the QC's opinion. When will the Council be considering the Articles mentioned in my (and others) questions to make sure that schools do understand their significance when applying the guidance to a particular set of facts, as this response lacks a clear time frame and risks not being completed?

**Response to supplementary question (cabinet member children and families):**

The up to date guidance is true as these are schools' responsibilities and the guidance is the national DfE guidance to schools which is being changed all the time. Schools all have the most up to date guidance. Work was being undertaken to ensure the guidance was more explicit regarding the relevant HRA articles. A written response would be provided.

*Written response – provided 11 August 2022:*

**The guidance provided by Herefordshire Council is up to date as it references current statutory guidance and law, which includes HRA. The guidance is designed specifically to support schools in managing peer on peer abuse Article 3,8,14,Protocol 1- Article 2 have been added to the September 2022 Child on Child abuse guidance in order to ensure schools understand their significance when dealing with such cases.**

PQ 4	Anonymous, Name and address supplied	<p>In the Leader’s recent newsletter, the Cabinet Member for Children wrote this in the section on peer-on-peer abuse:</p> <p>“We also offer a <b>fully independent and confidential mediation service</b> for any families or victims of abuse.”</p> <p>In September 2020, families who had been campaigning about safeguarding failures in connection with peer on peer sexual abuse were promised a “reconciliation” service. This has never materialised.</p> <p>It appears that the promised “reconciliation” service has now been replaced by a “mediation” service, without consultation with the families affected despite the recommendation from CYP Scrutiny on 1 June 2021, resolution 9b, which stated, “That consultation take place with families ahead of the signature of the contract for the mediation service”. If the mediation service now exists, why have the affected families not been informed or given access to the service?</p>	Cabinet member children and families
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**Response:**

Thank you for your question. The service referenced here is the same service – it is not true to say it has never materialised. The reconciliation service exists and is available. The contact details are available permanently on the council website under the heading ‘Protect Someone’ following a period of on line consultation. However the service that has been commissioned, fully independent from the council, calls itself a mediation service but offers a range of support and advice. The name was changed to avoid confusion but the offer has not changed in any substantive way. It is fully confidential and sits outside the council as agreed previously. It has been widely publicised. The exact details on the council website are :

*If your family has been affected by peer on peer abuse, there is local support available. Children First Family Mediation is an independent family mediation service who offer confidential, sensitive support to Herefordshire families and individuals who have been affected by peer on peer abuse. To access the service please contact Sheena Adam by email [confidential@childrenfirstfamilymediation.org.uk](mailto:confidential@childrenfirstfamilymediation.org.uk) or call 01617 638793 and quote “Herefordshire”.*

**Supplementary question:**

The answer provides a link to a mediation service set up to fulfil a promise of a process of reconciliation for families affect by the council’s failures on peer on peer sexual abuse. The email address did not work, a phone call to the number provided was answered by an individual who explained the service was to help families with their finances and help was not available for peer on peer abuse. There is no mediation service for peer on peer abuse. A family who had contacted the care concerns email address over a year ago had not had an acknowledgement and there are a number of families in this position. The council has harmed children and families by failing to deal honestly and openly with concerns. When process of



reconciliation first proposed families explained that fundamental to the process was the truth but the answer provided by the cabinet member shows a dis-connect between what members are being told and what exists in reality. All members should ask for evidence-based responses on all matters relating to children's services.

**Response to supplementary question (cabinet member children and families):**

Responding to concerns is very important and is a priority. I will be looking into this immediately.

PQ 5	Ms Shore, Bartestree	<p>In the first approved written answer to a public question to Cabinet, the Cabinet Member for Children claimed that the Council's position on peer on peer abuse is not discriminatory. In that answer, the justification given quoted Section 26 of the Human Rights Act. There is no S26 of the Human Rights Act. It simply does not exist.</p> <p>The concern has been raised repeatedly by the public that the Council's current policy and practice on peer on peer sexual violence is likely to lead to sex discrimination. The Council has rejected this position by quoting legislation which does not exist. Can the public now have a proper, detailed legal analysis of why the Council thinks that the failure to ensure that Article 3 rights are respected in EVERY case of peer on peer sexual violence will not lead to discrimination?</p>	Cabinet member children and families
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**Response:**

Thank you for your question. The sentence you refer to in the supplementary response to the question at Cabinet in May as I understand you have now been advised was incorrect and should have been removed. My apologies for that. The guidance as I have already said does take into account all relevant articles under the Human Rights Act and all other relevant legislation. I can only repeat guidance given to schools on this subject is kept under constant review and would follow all guidance and advice provided by the DfE.

**Supplementary question:**

It is astonishing that a response to a question about peer on peer abuse refers to a piece of the human rights act (HRA) which does not exist. The answer contained the wording: *s26 of the HRA 1998 sets out that schools and colleges should be aware of their obligations under the HRA*. The statement is meaningless as the article does not exist and exposes the fact that the officers do not understand the HRA sufficiently to be able to advise or train schools on the HRA. Currently there is no guidance for schools on the regard they must have for article 3, 8 and 18 of the HRA. Will the council commit to ensuring that the procedural obligations determining the rights of a victim of sexual violence under article 3 and 8 of the HRA are clearly explained in writing to schools so there is no risk of discrimination to girls?

**Response to supplementary question (cabinet member children and families):**

I agree there is the risk of discrimination against girls and that is clearly set out in the HRA. In terms of understanding the law, it is important that the safeguarding officers do understand. In terms of interpreting the law, there are certain elements we can set out in advance in guidance but there are other elements open to interpretation which would become very long winded in guidance and are better undertaken in a training forum. A written response would be provided.

*Written response – provided 11 August 2022:*

***All guidance produced by both Herefordshire Council and DfE make reference to and consider the HRA. Article 3,8,14,Protocol 1- Article 2 have been added to the September 2022 Child on Child abuse guidance in order to ensure schools understand their significance when***

***dealing with such cases. Further provisions within the Equality Act allow education settings to take positive action, where it can be shown that it is proportionate, to deal with particular disadvantages affecting one group. A school or college, could, for example, consider taking positive actions to support girls if there was evidence they were being disproportionately subjected to sexual violence or sexual harassment.***