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To: Councillor Keith Mans
Leader
Hampshire County Council
The Castle
Winchester
Hampshire
SO23 8UJ

By Email: keith.mans@hants.gov.uk

Dear Councillor Mans,

Consultation on proposed cuts to Public Health provision in Hampshire

<https://www.hants.gov.uk/aboutthecouncil/haveyoursay/consultations/public-health-consultation>

We are writing to you regarding the open consultation on the proposed changes to Hampshire County Council's Public Health Services. As the national professional bodies representing school nursing and health visiting, we urge you to review the impact that the proposed changes will have on babies, children and their families.

We believe there are several sets of grounds which, singly and severally, mean the County Council ought to review these plans. We set these out below:

Ground 1. Breach of statutory Safeguarding responsibilities

It has been brought to our attention that, if implemented, the proposed model may put the County Council in breach of statutory safeguarding responsibilities, and we believe that this warrants a more detailed review to determine whether or not this is the case. It is our view that the County Council will not be able to assure OFSTED or its members that it is meeting

its obligation to safeguard children and young people if the proposals in this consultation are enacted.

Ground 2. Undermining the delivery of the Healthy Child Programme so the authority cannot meet the Secretary of State's Mandation and will divert funds intended to deliver this to non public health purposes, in breach of the conditions of the public health grant

The proposed changes will have a significant impact on the delivery of the Healthy Child Programme, which has been mandated by government, and which is intended by government to be funded through the use of the ring-fenced public health grant. The proposals will lead to a direct breach of the mandated aspects of the programme.

Within the proposed plans to reduce the 0-19 Public Health Nursing Service budget by £2.09 million per year are significant elements that will undermine delivery of the HCP:

- reducing the number of staff posts (e.g. health visitors, school nurses and community staff nurses) available to support families by approximately 47 (12.5% of the current workforce);
- only providing school nurse support to children and young people over the age of 11 years through the 'digital offer', i. e NO face to face service.
- For children 0-5, all children will only receive one mandated face-to-face health review. All other reviews will be, *"risk assessed to decide whether they should be completed face-to-face, by video or by telephone"*.

Not only are these plans contrary to the mandate and expectation of the Healthy Child Programme, but they strip out the mechanism to identify vulnerable children (in all 3 categories of vulnerability).

The service will be unable robustly to identify who is vulnerable because they are not seeing families. Assessments will not be reliable as: vulnerability is not identified in a 'snapshot' assessment, no valid 'virtual' assessment tool exists (all current tools are designed to be used alongside health visitor/school nursing clinical judgement – they are not screening tools), needs change over time, some families will be excluded due to digital poverty and vulnerable babies have no voice to independently ask for help if parents/ carers do not recognise their needs. Moreover, without the universal safety net that health visiting and school nursing provides, vulnerable children will be missed, or identified too late. These cumulative impacts in our view would fundamentally and irreparably undermine the Authority's ability to claim it was delivering the Healthy Child Programme as mandated and as part of the conditions of the ring fenced grant.

Page 20 School nursing: Children aged 12 and over, states the school nursing service will no longer deliver:

- Safeguarding support including assessment of needs, the identification of unmet health needs, or independent advocacy
- Health representation at child protection conferences including contributing to decision making within child protection plans.....

Safeguarding of babies, children and families is always paramount. Your own Hampshire Child Safeguarding policy states this. These proposals will undermine that policy.

Post-covid, it is even more so with rising levels of children living with vulnerability and risk. England already has a significant problem, with 1/3 of all vulnerable children recognised as 'invisible' within the system and therefore not receiving the support that they need. This proposed model would place them at even greater risk.

In terms of inspectorate requirements, the CQC would be unable to apply their current inspectorate methodology as key lines of enquiry (KLOE's) will not be met. Assurances would be impossible to provide as many children would not have been physically seen, apart from the 1 face-to-face contact by the Health Visitor and 2 mandated contacts by the School Nursing service in reception and year 6, (these are purely for the national childhood measurement programme purposes and not wider assessments).

To ensure that children are protected and are enabled to achieve their full potential it is essential that the Hampshire consultation takes account of these serious safeguarding considerations and potential breach of statutory duties.

Ground 3. Failure to consult meaningfully and lawfully

Even in times of austerity, the duty of a local authority to consult fully and meaningfully is not removed or lightened. This was firmly established by the United Kingdom Supreme Court in the case of *Moseley, R (on the application of) v London Borough of Haringey* [2014] UKSC 56 (29 October 2014)¹. Cutting a service which will have a detrimental effect on someone using it cannot lawfully be done without meaningful consultation as set out in this precedent.

In particular:

1. the case made clear that while there is no general common law duty to consult persons who may be affected by a measure before it is adopted an obligation to consult may arise because of the common law duty of fairness [1].
2. The precedent made clear that local authorities should
 - a. contact all those who will be or are likely to be affected – we believe the Council has not done this.
 - i. In broad terms it is to let those who have a potential interest in the subject.
 - ii. In terms of who must be consulted the demands of fairness are higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit.
 - iii. if a person is likely to lose something or be worse off, then they should be specifically identified and consulted

¹ [2014] 1 WLR 3947, [2014] UKSC 56, [2014] LGR 823, [2015] 1 All ER 495, [2014] PTSR 1317, [2014] WLR 3947, [2014] WLR(D) 486 The full judgement can be accessed at [Moseley, R \(on the application of\) v London Borough of Haringey \[2014\] UKSC 56 \(29 October 2014\) \(bailii.org\)](https://www.bailii.org/uk/uksc/cases/uksc2014/uksc56.html)

- b. consult them before irreversible decisions are made with information about the proposals such as a draft scheme or policy, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of its preferred option – we believe the document does not set this out in a way which is consistent with the legal duties of the council. Consultation must be at a time when proposals are still at a formative stage and give sufficient reasons for any proposal to permit a person to, in the court's words, "give an intelligent consideration and response".
 - i. These proposals cannot be said to be at a formative stage. They are fully formed as if ready for decision
 - ii. Meaningful public participation in the decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about proposals such as a draft scheme or policy, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of its preferred option
 - iii. There are no realistic alternatives mentioned. In particular there is no mention of the fact that the Council could decide not to make cuts from the ring-fenced public health grant, a grant intended to be spent on mandated public health functions. In not doing so the Council fails to set out realistic alternatives to these proposed cuts. We mention below why we believe this is a realistic alternative.
- c. give them adequate time to respond, for example six weeks to three months would be reasonable in most circumstances - given the vulnerability of many families and the stress of the pandemic, a two month consultation period coinciding with the end of the school year will place stresses on many parents and render them unable to meaningfully consult in this time.
- d. Following the response from the consultees, ensure active consideration is given to the response. We see no indication in this consultation that the council will give realistic active consideration to this and the document is set out to justify why the council should make these decisions. In other words, the document presents itself as if the decision has already been made.

On the basis of this analysis, we do not see how this consultation can justify itself as being fair, serious, meaningful or lawful within the terms of the precedents set in law.

Moreover, there must be a sound methodology for data collection, processing and analysis of responses. The consultation document makes no indication of how responses will be fairly, meaningfully and clearly presented and not cherry picked so as to support a particular preferred approach.

Ground 4. Breach of the conditions of the Public Health Ring-fenced Grant

The conditions of the Public Health ring-fenced grant to local authorities² make clear that:

² [Public health ring-fenced grant 2021 to 2022: local authority circular - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/circulars/2021/03/public-health-ring-fenced-grant-2021-to-2022)

1. the grant must be used only for meeting eligible expenditure incurred or to be incurred by local authorities for the purposes of their public health functions as specified in section 73B(2) of the National Health Service Act 2006 (“the 2006 Act”).
2. Those functions are specified as public health mandated functions which include the delivery of the Healthy Child Programme and
3. “if payments are made out of the fund towards expenditure on other functions of a local authority or the functions of an NHS body, other public body, or a private sector or civil society organisation, the authority must be of opinion that those functions have a significant effect on public health or have a significant effect on, or in connection with, the exercise of the functions described in paragraph 3”
4. In particular:
 - a. “the authority must be satisfied that, having regard to the contribution from the public health grant, the total expenditure to be met from the fund and the public health benefit to be derived from the use of the fund, the arrangements provide value for money”
 - b. AND A local authority must, in using the grant have regard to the need to reduce inequalities between the people in its area with respect to the benefits that they can obtain from that part of the health service provided in exercise of the functions referred to in paragraph 3

The public health grant is only paid to local authorities to support eligible expenditure. Grant carried over to the following year is governed by the grant conditions.

In reality, the effect of the proposals in the consultation document are that public health funding which is ring-fenced for the purposes outlined clearly in the conditions of grant will be used to offset part of the County Council’s budget deficit. In other words, they will be used for purposes other than those mandated as conditions of the grant.

In particular, on pages 4/5, whilst we fully understand the challenges faced by Hampshire County Council in ‘Balancing the budget’, there is no reference to what wider actions, if any, have been taken to reduce overall spending across the Council; and why the Public Health Grant should be used for non ring-fenced purposes in a way which undermines the authority’s delivery of its mandated public health functions.

In order for this to be a transparent and lawful consultation process this detail should be made publicly available/linked to enable informed understanding and responses. This consultation document does not make it clear where, indeed, these funds are being spent and how the total sum is being directed towards these functions

We believe this will be a misuse of the funding and that it will be impossible for the authority to divert this money and adhere to its duty to demonstrate the diversion of this funding will have fair regard to the need to reduce inequalities or deliver mandated public health functions because those functions will be the functions which suffer most.

We therefore do not understand how the authority can proceed to take this decision and remain within the terms of the grant. The effect of this is fourfold:

1. We believe the authority may potentially put itself in a position where it is in breach of the conditions of grant and therefore ultra vires
2. We believe the determination to use monies for purposes other than those the monies are explicitly allocated for undermines the authority's ability to meet the expectation set out in the precedent above that it has fairly set out any realistic alternatives to the cuts.
 - a. A realistic alternative is to adhere to the conditions of the ring fenced grant and spend it on those functions intended by the secretary of state, not divert monies to functions which cannot show the same public health benefit or impact on inequalities
 - b. This therefore undermines the fairness, thoroughness and reasonableness of consultation and renders it unfair, unreasonable and unlawful.
3. We do not see how the Chief Executive or Section 151 Officer can, should the diversion of funds take place, certify as requires by Para 16 of the conditions of grant that "to the best of their knowledge, the amounts shown on the Statement relate to eligible expenditure on public health and that the grant has been used for the purposes intended, as set out in this Determination."
4. This amounts to a breach of the conditions of grant as set out in Para 28 which provides *inter alia* that:
 - a. "If an authority fails to comply with any of these conditions, or any overpayment is made under this grant, or any amount is paid in error, or if an authority's Chief Executive or S151 Officer and Director of Public Health are unable to provide reasonable assurance that the RO form, in all material respects, fairly presents the eligible expenditure, in the relevant period, in accordance with the definitions and conditions in this Determination, or any information provided is incorrect, the Secretary of State may reduce, suspend or withhold grant payments or require the repayment of the whole or any part of the grant monies paid, as may be determined by the Secretary of State and notified in writing to the authority. Such sum as has been notified will immediately become repayable to the Secretary of State who may set off the sum against any future amount due to the authority from central government."

In other words, the authority risks breaching the conditions of grant and Secretary of State's recovery in a zero sum game which harms the health of its residents and fundamentally undermines its public health duties as set out in the Health and Social Care Act 2012.

We feel the need to draw to the attention of Public Health England, who act as Accountable Agency for the use of the ring-fenced grant, these potential misuses of public health funds. We have also taken the decision to draw to the attention of your external auditors their duty as set out in paragraph 23 of the grant conditions to reach "a conclusion on an authority's overall arrangements for securing economy, efficiency and effectiveness in the use of resources. The use of, and accounting for, the public health grant and the arrangements for securing economy, efficiency and effectiveness in doing so fall within the scope of the work that appointed auditors may plan to carry out, having regard to the risk of material error in the authority's accounts and significance."


Similarly, on pages 4/5, whilst we fully understand the challenges faced by Hampshire County Council in 'Balancing the budget', there is no reference to what wider actions, if any, have been taken to reduce overall spending across the Council; in order for this to be a transparent process this detail should be made publicly available/linked to enable informed understanding and responses. Additionally, the Secretary of State provides a ring-fenced budget for Public Health. This consultation document does not make it clear where, indeed, these funds are being spent and how the total sum is being directed towards these functions

We would welcome the opportunity to meet with you to discuss these concerns and would also be glad to assist in any way possible.

Yours sincerely,



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