



**CHILDREN AND FAMILIES
OVERVIEW AND SCRUTINY COMMITTEE**

3RD NOVEMBER 2014

REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES

MTFS SAVINGS AND THE EDUCATIONAL PSYCHOLOGY SERVICE

Purpose

1. The purpose of this report is to address issues raised by the professional association of educational psychologists (AEP) in its letter to the Chair of the Overview and Scrutiny Committee regarding decisions about the Medium Term Financial Strategy (MTFS).

Policy Framework and Previous Decisions

2. The Children and Families Overview and Scrutiny Committee considered the proposals for departmental MTFS savings at its meeting on 20th January 2014 and again on 1st September 2014.
3. The County Council's budget, including the current MTFS, was agreed at the County Council meeting on 19th February 2014.

Background

4. The reports to the Overview and Scrutiny Committee about the MTFS 2014/18 have identified that the Children and Young People's Service had made savings of just over £30m during the financial years 1st April 2010 to 31st March 2014, primarily in education services. The MTFS savings for the financial years 2014/18 for the new Children and Family Services total £13.24m and are set out in Table 1 below. The 2015/16 savings target includes an agreed saving of £240k for the Educational Psychology Service.

Table 1

	Children and Young People's Service £000	Youth Offending Service £000	Children and Family Services £000
2014/15	3,400	0	3,400
2015/16	8,290	350	8,640
2015/16	1,000	90	1,090
2017/18	0	110	110
	12,690	550	13,240

5. The Committee was also informed in the September report that the department has created a coherent transformation programme for the 19 separately identified savings areas, plus YOS, and that this includes 4 major areas of transformation:
- remodelling children's social care;
 - remodelling early help services;
 - remodelling special educational need and disability services;
 - remodelling other education services.

6. The individual services contained in d) above were set out in the previous reports as service teams in scope of redesign and are:

Pupil services team
 Education of Children in Care team
 Oakfield School (Pupil Referral Unit – primary phase)
 Special Educational Needs Assessment (SENA) service
 Disabled children's service
 Specialist teaching services
 Educational psychology service

The Committee was informed that “the deliverables and benefits are currently being defined.”

7. On 7th October 2014, the Regional Office of the Association of Educational Psychologists wrote to the County Council requesting that various matters be brought to the attention of the members of the Children and Families Overview and Scrutiny Committee. That letter is attached at Appendix A. The key questions in the report are:

- why has the agreed MTFS saving of £240k, as agreed by the County

Council, now risen to £391k without Member approval?

- b) why this was not mentioned at the meeting of the Overview and Scrutiny Committee on 1st September, when there is a minute of an officer meeting on 20th August 2014 that the savings target was now £391k?
 - c) who has been consulted and what has the response been? How, if at all, have their views been taken into account in this proposal?
8. Additional comments to be addressed in the report are that:
- i) schools are not aware of the full implications of the proposals;
 - ii) now is not the time to cut the role with a view to the requirements of the Children and Families Act;
 - iii) AEP is confident that the £240k in savings could be achieved through income generation.

Questions raised by AEP and responses

Why has the agreed MTFS saving of £240k, as agreed by the County Council, now risen to £391k?

9. During the summer and autumn period 2013, the Director, in setting out the financial challenges for the County Council and the department, requested that all service managers go through an exercise to identify a minimum of 10% savings in their budgets. The intention being to look at this option as a starting point towards finding even greater savings through a more strategic approach. The Educational Psychology Service identified savings of £240k and this was incorporated into the MTFS process.

Comment:

Lesley Hagger states that all service managers went through an exercise to identify a minimum of 10% savings in their budgets. She goes on to say that, 'the Educational Psychology Service identified savings of £240k'.

This is incorrect.

The exercise to identify savings was completed by the Principal Educational Psychologist (PEP) in October 2013, in consultation with the team and her line manager at the time, Charlie Palmer.

The savings identified were £134,260, which was actually 10% of the Educational Psychology Service budget.

A saving of £240,000 was not identified. We understand that the PEP has a copy of the paper prepared at the time, based on the £134,260 saving as evidence of the true position at that time. The PEP can provide a copy of this document if requested.

The figure of £240,000 was announced by John Sinnott on 7 January 2014 to CYPS, without any consultation with the Leicestershire Psychology Service and it came completely 'out of the blue'.

Following this announcement, the PEP held a number of meetings:

- i. With Head of Strategy (Vulnerable Groups) on 8 and 9 January 2014.
- ii. With the Assistant Director Gill Weston on 14 January 2014.
- iii. On the 3 February 2014 the PEP met with Lesley Hagger, Director CFS.

The outcome of these meetings was that the unexpected shift from £134,260 to £240,000 was an error which was attributed to the Head of Strategy (Vulnerable Groups). The PEP was informed that the error would not be corrected and that the saving of £240,000 would go forward in the MTFS ...

The AEP considers this to be a serious matter. We believe that there is a legal duty on officers to ensure that elected Members are provided with the accurate information when they make the decisions they do in respect of service provision and the budgets that underpin them, in this case services to children and young people.

Consequently, the papers that went to Cabinet on 15 January 2014 contained the figure £240,000 and not the £134,260 the Educational Psychology Service was working to.

We reiterate that the PEP had not identified a figure of £240,000 nor had the Educational Psychology Service been consulted about this higher figure.

10. Subsequently, the service manager, in discussion with the Director, explained that this would mean stopping services for some children part way through the academic year as the budget operates to the financial year. The Director agreed that this should be avoided and agreed that the service could continue to offer support until the end of the academic year 2015, but that the savings would still need to be met in full in the financial year 2015/16.

Schools were informed by the service and the service manager started discussions with staff.

Comment:

The PEP was now left with in a difficult position. She informed her new line manager, Chris Bristow, of the situation when he took over her line management from Charlie Palmer on the 1 February 2014. The situation did not change.

However, the PEP is now firmly of the belief that this initial, uncorrected error, described above, underpins all that has gone wrong with the Educational Psychology Service restructure proposals thereafter.

As part of her meeting with Lesley Hagger on the 3 February 2014, the PEP presented a paper which outlined the risks of cutting the Educational Psychology Service by 18% and she proposed that the Educational Psychology Service be allowed to achieve the saving through 'trading' activities. The PEP can make a copy of this paper available on request.

This would enable the Educational Psychology Service to tap into funding streams outside of the local council's budget, which are acknowledged to be under considerable strain. This strategy has successfully protected Educational Psychology Services in a number of other local authorities and we can provide those examples if needed. The evidence is that schools value educational psychology and are prepared to 'buy in'.

The key recommendation in the PEP's paper was:

"The Psychology Service continues at current staffing levels with permission to trade sessions to schools in order to meet the 18% budget cut. It would not be possible to achieve earnings of £240,000 in 14 months; therefore I recommend that we achieve 9% by 2015/16 and 18% by 2016/17".

The PEP recalls that it was Lesley Hagger who raised the problem of cutting a service to schools part way through an academic year and proposed, as a solution to the problem of discontinuity, that the Educational Psychology Service defer the redundancies until the end of the academic year 2014/2015.

In the remainder of this paper we will refer to this proposal as the '8/12 option' to save confusion.

The following day Lesley Hagger sent an email to the PEP stating that the full budget saving (of £240,000) would need to be made by the end of the financial year 2015/2016 and she said that documents the PEP had presented to her had led her to think that it was feasible to achieve a saving of £240,000 under the '8/12 option' in 2015/2016 recommending that the '8/12 option' was possible.

The PEP is clear that she did not agree an on-going cut of 29% or £391,000 to the Educational Psychology Service.

The AEP is deeply concerned that the '8/12 option' appeared to gain unchallenged traction following what was a private meeting between two officers.

There was no 'unpacking' of the consequences for the service and for employees that would flow from the '8/12 option' i.e. that 'concertinaing' permanent redundancies into 5 months of a financial year to save £240,000 in 2015/2016 actually meant a £391,000 saving for the ensuing full financial years in the MTFs.

The 'business as usual' offer was unworkable and actually disadvantaged schools/families for the following reasons:

- i. This strategy offers no medium-term comfort to schools at all; they get through 2014/2015 academic year without disruption but that is all and at what cost.
- ii. Cuts this deep would put an end to any trading ambitions the Educational Psychology Service might harbor as it would now lack the capacity to deliver to schools whatever the demand.
- iii. Furthermore, educational psychologists are in short supply nationally and should they be made redundant in Leicestershire, they will be quickly snapped up elsewhere and the strong likelihood is that they will not be replaced when demand from the schools feeds through. As one measure, only 132 new trainee Educational Psychologist entered the first year cohort for the entry-doctoral training programme at the start of September 2014, yet in the twelve months to the start of September 2014, the AEP carried adverts for 244 educational psychologist vacancies in England and Wales. In some regions, some 45% of the vacancies we advertised attracted no 'appointable' applicants at all.
- iv. Even if the Council were to try and address subsequent school-led demand through recruitment, the prospect of re-employing educational psychologists who had recently received redundancy payments would hardly represent 'best value' for the council tax-payers of Leicestershire.

- v. The timeline for the restructure meant that staff would be made redundant and then expected to work beyond their normal notice periods i.e. until August 2015 to fulfill the '8/12 option'. Quite apart from the morale issues this would entail, there are a number of legal complications. We seriously doubt if staff made redundant could be obliged to work beyond their notice period to satisfy the '8/12 option'.

The PEP also came to the view that the '8/12 option' was not workable. She raised her concerns with her line manager, Chris Bristow, in one to one meetings, and is confident that these concerns were escalated.

In addition, there were at least three occasions when the '8/12 option' was discussed and challenged by the PEP but a reversal of the decision was not agreed. The key dates are:

- 14 May 2014, at a meeting between Chris Bristow, Lesley Hagger and Morag Gornall, PEP.
 - 4 June 2014, at a DMT meeting.
 - 7 July 2014 at a meeting between Chris Bristow, Jenny Lawrence (Finance), Gill Weston (AD) and Morag Gornall, PEP.
11. It was also agreed that this was an opportunity to fully review the current format and functions of the Service to achieve clarity about what are statutory functions, 'core' functions and other functions. Initial proposals were presented to the departmental management team for discussion on 4th June 2014 and options on proposals were presented to the departmental transformation board on 23rd July 2014. This is attached at Appendix B.
 12. Two options were presented by the Service Manager: one totalling a saving of £391,011; the other achieving an additional savings of £3000. The paper also stated that "It is understood that the staffing structure in place on 1st August 2015 may continue as a permanent reduction." (Page 6, paragraph 1). The minute from the meeting is attached at Appendix C. It was agreed that an action plan be initiated to include both options.

Comment:

The PEP was directed to write this report. It does not reflect her views.

Lesley Hagger notes that the paper presented to Transformation Board said, "*it is understood that the staffing structure in place on 1st August 2015 may continue as a permanent reduction*".

It makes no sense to suggest that the PEP would seek to make a permanent cut to the Educational Psychology Service of the magnitude of £391,000. The decision had already been made by others and was conveyed twice to the PEP by Finance Officers on two separate occasions prior to the 23 July 2014.

At Transformation Board on the 23 July 2014, the PEP tried to gain some clarity as to whether the £391,000 was actually permanent. No answer was forthcoming. It was not until she was provided in early September with copy of the Transformation Board minutes from 20 August 2014, which stated that the cut would “continue for the duration of the MTFS” that she knew it would be.

13. At the next meeting of the departmental transformation board on 20th August, as a note on the review of the minutes of 23rd July 2014, it was stated that: “The Board noted that the agreed saving for 2015/16 was £391k and (will) remain for the period of the MTFS”. This is an internal minute as part of the deliberations regarding the MTFS planning for the future where it is already known that there will be a need to make savings beyond the current £13.24m target. The plans for further savings will be taken through the proper process for political decision making. Nevertheless, regardless of future need, the requirement to achieve the full savings in the current MTFS for this service (£240k), and fulfil the obligation made to schools, at the request of the service, to continue provision until the end of the academic year 2015, will require an action plan to save £391k.

Why this was not mentioned at the meeting of the Overview and Scrutiny Committee on 1st September, when there is a minute of an officer meeting on 20th August 2014 that the savings target was now £391k?

14. The papers for the Overview and Scrutiny Committee on 1st September 2014 were completed prior to the departmental meeting on 20th August 2014. There was no specific discussion at the Overview and Scrutiny meeting about the Educational Psychology Service. In any case, it would not have been appropriate to discuss plans for the next MTFS at this meeting as this was not the subject of the agenda item. Proposals for the next MTFS will be the main agenda item for the January meeting of the Overview and Scrutiny Committee, prior to decisions by the Cabinet and approval of the budget at the County Council meeting.

Comment:

At paragraph 12, Lesley Hagger relies upon Appendix B, which was written on 11 July 2014: plenty of time was then available to bring it to the attention of Overview and Scrutiny committee on the 1 September 2014.

Although not openly stated, it is clear from this paragraph that the proposal for on-going cuts of £391,000 for 2016/2017 and 2017/2018 is ultra vires i.e. it has no elected Member approval. It would seem from what is written here that attempts to get that approval retrospectively will not even start until the January 2015 meeting of Overview and Scrutiny Committee!

If it starts then and Lesley Hagger remains 'wedded' to 1 August 2015 as the implementation date, then we say there is no scope for the meaningful consultation we would expect to see when our members' jobs are at risk.

Who has been consulted and what has the response been? How, if at all, have their views been taken into account in this proposal?

15. - The Service Manager has been in discussion with her staff since the MTFS was approved earlier this year;
- The papers presented to the departmental management meeting in June 2014 and the departmental transformation board in July set out the plan to "start formal dialogue with schools, settings, families and partners.";
 - The minutes of the departmental transformation board meeting on 23rd July 2014 note an agreement to: "start a formal dialogue with schools (including trading dialogue), settings, families and partners about the future shape and function of LPS.";
 - Formal consultation with staff will start once the final draft Action Plan has been agreed.

Comment:

We have explained how the situation has evolved over time in the comments set out above. Our members in the Educational Psychology Service were not aware of the full facts surrounding a £391,000 permanent cut until early September 2014. The PEP was being directed to construct proposals without the full financial picture.

The schools may have been given some reassurances to the effect that there would be no disruption to the educational psychology services in the academic year 2014/2015, but how many schools were actually apprised of the fact that the consequence of 'shoe-horning' the £240,000 cut into the remainder of the financial year 2014/2015 (i.e. from 1 August 2015) would be an ongoing cut of £391,000 for the ensuing years?

The AEP believes that the Council will not now be able to demonstrate that it has consulted meaningfully about these proposals.

Its officers are working to an implementation deadline of 1 August 2015 but have frittered the time between the 19 February 2014 and the 20 August 2014 reinterpreting the very clear budget decision they were given to 'fit' with a '8/12 option'. We say that the budget direction has primacy not the '8/12 option' and the ultra vires consequences that flow from it. Instead of accepting that, they intend to try and convince elected Members (starting in January 2015) to change the MTFS figures for 2016/2017 and 2017/2018 from £240,000 to £391,000.

The principles of meaningful consultation have been set out in a number of employment tribunal judgments, including *R v North and East Devon HA ex parte Coughlan [1999] EWCA Civ 1871*. In that case, Lord Woolf MR said:

- i. Consultation must be undertaken at a time when the proposals are still at a formative stage;
- ii. Sufficient reasons must be put forward for the proposals to allow for intelligent consideration and an intelligent response;
- iii. Adequate time must be given for consideration and response;
- iv. The product must be conscientiously taken into account when the decision is ultimately taken.

We would submit that these proposals are not at a formative stage and time is running out fast to conduct a proper consultation of schools and other interested parties on a traded alternative to them.

The objections and professional concerns expressed by the PEP have all been overridden so we currently have little faith that conscientious consideration would be given to any AEPs submissions.

Additional comments from AEP and responses

Schools are not aware of the full implications of the proposals.

16. Schools were first contacted in May with a view to ascertain the level of service that they might wish to purchase from the Service in future, in light of the changes proposed as a result of the need to save £240k from the 2015/16 budget. Schools have since been contacted again. Agreement has been given to begin formal discussions with schools as set out in paragraph 15 above.

Comment:

The consequences of an on-going 29% cut to the Educational Psychology Service has not been put to the schools and they will not be until the Action Plan has been agreed. We do not know when that will be but the launch date penciled in is for 13 January 2015.

Now is not the time to cut the role with a view to the requirements of the Children and Families Act.

17. Unfortunately, the Children and Families Act, whilst bringing additional duties to the County Council does not bring additional resource. The significant savings required by Children and Family Services needs to respond to new legislation whilst also fulfilling statutory duties. The current service provided by the Educational Psychology Service offers the statutory function, plus additional 'core' functions, plus traded functions. In the proposed revised structure, the 'core' functions will still be provided free of charge to schools over and above the statutory role of the Service.

Comment:

It is simply not credible to say that there would be no diminution to the levels of statutory and 'core' services schools receive after a 29% cut. Moreover if some of the preventative work currently being undertaken is reduced or diluted, then the reaction may well be seen in a rise in statutory requests from parents and schools i.e. an increase in workloads.

Currently the DfE advice seems to be that statement conversions cannot be done by way of a simple review, rather all cases must be looked at properly and, in cases where an educational psychologist has given advice previously, then they must contribute directly to the conversion.

AEP is confident that the £240k in savings could be achieved through Income generation.

18. The original analysis of traded income for the Educational Psychology Service showed that large majority of this income was being provided by other internal departmental services, all under their own budgetary pressures and so this cannot be relied on in the future. Additional income from schools accounted for a small percentage of the traded income in comparison.
19. Schools were approached in May 2014 in order to 'test' the market for

trading. The results of this showed that:

- 29 schools returned the questionnaire (10% of all schools);
- 16 indicated that they would purchase a service.

The analysis regarding the income that this would generate on a full cost recovery basis is yet to be considered by the department. Full details of the questionnaire are contained in Appendix B at pages 10 and 11.

20. If it could be demonstrated that the income from trading could provide the required income, at full cost recovery, to maintain staff roles this could be considered as part of the Action Plan. However, the traded activity cannot include those elements of the role that constitute the statutory function of the local authority.

Comment:

We are of the view that schools value educational psychology and so this can be done.

If your officers want to discuss how that has been done successfully in Barnsley (£400,000) or Sheffield (£370,000) for instance, then we would be happy to facilitate that.

We agree that the schools need to be properly and systematically surveyed to see what they would 'buy back'. The AEP has expertise in this area of market research and is more than willing to work with the Council to ensure that a thorough survey is undertaken, if the Council's officers share our aim of mitigating redundancies.

20. As set out in the paper to the Overview and Scrutiny Committee in September 2014, "There is interest from a number of service areas within the department to trade their services, particularly in the area of training provision for school based staff where there is a limited supply of other high quality providers. This is currently being explored but must be able to be a fully cost-recoverable option and cannot be established as an alternative form of funding for services that must be provided as a statutory responsibility of the LA."

Comment:

On the "fully cost-recoverable" point, the Council is currently engaging locums at considerable cost as the report to the 23 July 2014 Transformation Board states:

“A Locum E.P costs £500 per day, while full cost recovery of a Local Authority E.P is £452 per day. Since Locum EPs are essential for traded activity, it will be hard to make any surplus in 2014/15.”

So surely the answer is to re-direct the traded work to those educational psychologists the Council actually employs but is looking to make redundant, pitch the rates charged at appropriate levels, but including some locum contingency for peaks.

Our concern is that that transformation takes some time and we wonder if the service will be given it.

Engagement and Consultation

21. In accordance with HR procedures, full consultation with staff will commence once the draft Action Plan is finalised.

Comment

In our opinion, this is where the officers' approach truly comes unstuck.

According to Lesley Hagger's report, consultation with staff and trade unions over the cut of £240,000 for 2015/2016 will commence when the *“Action Plan is finalised”*.

Whilst we are not told when that will be (although we understand that the launch date is said to be 13 January 2015), we accept that there is at least a mandate for that, arising out of the 19 February 2014 full Council decision.

But the problem is that at the point at which those cuts are made, they will simultaneously cement into place the cuts of £391,000 for 2016/2017 and 2017/2018 and there is no mandate for that.

To get a mandate for 2016/2017 and 2017/2018 cuts of £391,000, the officers need to go to elected Members and as they say in this report, at Paragraph 14, they do not plan to start to do that until the 19 January 2015 Overview and Scrutiny Committee.

So, if the Action Plan is finalised and being consulted upon on 13 January 2015, then those officers run the risk that the elected Members may not want to change their 19 February 2014 decision to cut the Educational Psychology Service budget by £391,000 in 2016/2017 and 2017/2018 when those officers seek approval six days later.

If that happens, and the officers cannot say definitively that it will not, then

that would mean that the finalised Action Plan would have to be rescinded within a week of its launch.

It is a real mess.

Equal opportunities implications

22. The majority of the work of Children and Family Services is targeted towards vulnerable and disadvantaged children, young people and families. Where proposed savings are likely to have an adverse impact on service users protected under equalities legislation, an Equality and Human Rights Impact Assessment (EHRIA) is carried out prior to any final decisions being made. At this stage in the transformation programme there are no specifically identified adverse implications for protected groups, and the opportunities to innovate are providing mitigation. However, the EHRIAs are re-visited at various stages in the project plans and so any adverse implications that may arise can be identified and taken into account.

Background Papers

24. Cabinet – 15th January 2014 - Medium Term Financial Strategy 2014/15-2017/18

Children and Families Overview and Scrutiny Committee – 20th January 2014 – Medium Term Financial Strategy 2014/15-2017/18

Children and Families Overview and Scrutiny Committee - 1st September 2014 - Implications of MTFs Savings

Circulation under local issues alert procedure

25. None

Appendices

Appendix A - Letter from AEP 7th October 2014

Appendix B - Paper to departmental transformation board 23rd July 2014

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