

Cheshire East Council

Corporate Parenting Committee

Date of Meeting: 23rd January 2018

Report of: Kerry Birtles, Head of Cared for Children & Care Leavers

Subject/Title: Corporate Parenting Update

Portfolio Holder: Jos Saunders

1. Report Summary

1.1. This report provides an update to the Corporate Parenting Committee on national and local developments in relation to cared for children and young people and care leavers.

2. Recommendation

2.1. Corporate Parenting Committee is asked to:

2.1.1 Note the contents of the report.

3. Reasons for Recommendation

3.1. The Corporate Parenting Committee is as advisory group to the Cabinet and, as such, needs to be aware of any national or local issues that are likely to impact on cared for children and care leavers. The Corporate Parenting Committee need to be able to scrutinise and challenge performance to improve outcomes for cared for children and young people.

4. Other Options Considered

4.1. None; this is an update report.

5. Background

National Developments

DfE consultation: Children and Social Work Act - Corporate parenting, local offer, and support to age 25

5.1. The Children and Social Work Act 2017 received Royal Assent on 27th April 2017. The Act includes provisions in Section 1, Section 2 and Section 3 regarding corporate parenting principles, the local offer to care leavers, and extending support from local authority Personal Advisers to all care leavers up

to age 25. On 16th October 2017 the DfE launched a consultation to seek views on:

- Draft statutory guidance for local authorities on applying the corporate parenting principles to care and pathway planning
- An illustrative local offer for care leavers and accompanying guidance on the local offer for local authorities
- Draft statutory guidance on extending the personal adviser duty, aimed at local authorities, commissioners of services for care leavers and looked after children, as well as partner agencies and providers of services for care leavers and looked after children

5.2. The consultation closed on 27 November 2017. Local Authority Officers completed the consultation; the DfE's response to issues raised is expected in due course before the new legislation commences on 1 April 2018.

Change in case law re DOLs

5.3. The Deprivation of Liberty Safeguards (DOLs) is an amendment to the Mental Capacity Act 2005. They apply in England and Wales only. The Mental Capacity Act allows restraint and restrictions to be used – but only if they are in a person's best interests. Extra safeguards are needed if the restrictions and restraint used will deprive a person of their liberty. These are called the Deprivation of Liberty Safeguards. There are some recent cases in relation to DOLs and cared for children as set out below:

Armes v Nottinghamshire County Council [2017] UKSC 60

5.4. **Held:** That a local authority has a 'non-delegable' duty of care towards children in its care and therefore is liable vicariously for the abusive actions of its residential care workers and foster carers.

5.5. **The facts:** The Claimant had been removed twice from the care of her mother in the 1980s before the Children Act 1989 came into force and was in the care of the respondent local authority from the ages of seven to eighteen. During this time she was physically, emotionally and sexually abused by foster parents. The Claimant sought to argue that she should not have been removed and that the Local Authority was vicariously liable for the actions of her foster/residential carers. This was a successful appeal to the Supreme Court following dismissed appeals in lower courts.

5.6. This new ruling confirms that Councils are vicariously liable for abuse carried out by their foster carers on the basis that:

- Councils recruit, select and train foster carers and monitor and assess them on an ongoing basis.
- The council retains parental responsibility and makes decisions on things such as medical treatment.
- Foster carers are paid allowances by the council.

- The council has a close degree of control over their foster carers and can remove children from their care at any time.
- Councils are aware that this foster care arrangement involves a risk of sexual abuse as children are placed in the houses of foster carers. Councils create this risk when children are placed with them.
- Councils are in a better position than foster carers to meet compensation claims.

D (A Child) [2017] EWCA Civ 1695

- 5.7. **Held:** that parents may consent to the deprivation of liberty of a young person aged 16 or 17 years old.
- 5.8. **Facts of the case:** Birmingham City Council were appealing the decision of Keehan J in the Court of Appeal that parents could not consent to the deprivation of liberty of their 16 year old child who was disabled and lacked capacity to make his own decisions about his care and treatment. The Court of Appeal had previously decided that parents *could* consent when the child was 15 but not when he was 16.
- 5.9. The key aspect of the judgment was the issue of whether a parent can consent to arrangements for a 16 year old, which would otherwise be a deprivation of liberty. The Court of Protection had previously found that parental consent was not sufficient once a child turned 16 but the Court of Appeal disagreed, finding that a child's ability to make decisions was not just about their age but involved issues around maturity and understanding. It therefore had to be dealt with on a child-specific basis.
- 5.10. Once a child turned 16, the issue of whether parents could consent to what would otherwise be a deprivation of liberty depended on whether the child was 'Gillick competent', which is the well-established concept governing children and young people's ability to make their own decisions. Gillick competence or capacity requires the child to have sufficient understanding and intelligence to understand fully the decision which is to be taken, with the matter of them attaining the age of 16 being irrelevant to this consideration. The result of the appeal here therefore was that D's parents were able to consent to what would otherwise have been a deprivation of liberty since D was not Gillick competent.

Changes to SEND Tribunals

- 5.11. New Regulations come into force from 3 April 2018 around special educational needs and disabilities (SEND) tribunals in relation to health and social care provision (i.e. all health and social care provision that isn't 'deemed' to be educational provision), including:
- These regulations only apply to appeals (a) against decisions of local authorities made on or after that date or (b) relating to an EHCP made or amended on or after that date.

- Unlike in relation to the SEN sections of an EHCP which the Tribunal can require to be rewritten, the Tribunal's powers in relation to health and social care needs and provision are limited to making 'recommendations' .
 - By their nature recommendations are non-binding. There may well therefore be cases where the local authority or CCG consider and reject the Tribunal's recommendations. The remedy in such cases would be a complaint to the Ombudsman or (in serious and urgent cases) an application for judicial review (JR). However a successful JR would need to show an error of law in the approach of the local authority and / or CCG, for example irrationality or a failure to take all material considerations into account.
 - The duty on the CCG or local authority is to respond to any relevant recommendations, including giving written reasons for any decision not to follow all or part of the recommendation
- 5.12. A Department of Education (DfE) Briefing event concerning the changes is taking place on 29th January, when more information will be known.

Care of unaccompanied migrant children and child victims of modern slavery

- 5.13. The DfE published statutory guidance in November 2017 around the care of unaccompanied migrant children and child victims of modern slavery, aimed at local authorities and staff running local multi-agency safeguarding arrangements. It sets out the steps local authorities should take to plan for the provision of support for looked after children who are unaccompanied asylum seeking children, unaccompanied migrant children or child victims of modern slavery including trafficking. Elements of this guidance are also relevant for the care of looked after UK nationals who may also be child victims of modern slavery. It does not provide detailed guidance on steps that local authorities should take, in partnership with other agencies, to identify and protect child victims of modern slavery, including trafficking, before they become looked after. This is described in practice guidance *Safeguarding children who may have been trafficked*, published by the Department for Education and Home Office in 2011.

Local Developments

Update on Corporate Parenting strategy

- 5.14. The current Corporate Parenting Strategy 2015-17 is due for review. Work is currently underway to produce a new strategy, co-produced with young people. A draft will be brought to the next meeting of the Committee.

Proposed Framework for engagement with Corporate Parenting Committee

- 5.15. Since joining the authority in August 2017 and exploring the extent to which corporate parenting exists within the borough, I have made some reflections on the visibility and relationship of elected members as corporate parents with our cared for children and care leavers. It is not only aspirational but also necessary to continue to strengthen our corporate parenting duties in order to

achieve the very best outcomes for our children. At a recent meeting of the Corporate Parenting Operational Group in December 2017, the group reflected on this whilst considering the Social Work Reform and when thinking about what we would like our corporate parenting strategy to look like. The group have identified a number of possible ways in which elected members could further develop their corporate parenting responsibilities

- 5.16. Cared for children can be distrusting of people they perceive to be from authority or social work backgrounds because of their experiences of being removed from the care of their parents. Social workers build relationships with their children over time and share with them information about themselves in order to build trust in the relationship. It is suggested that elected members write a **'pen picture'** of themselves outlining past experiences and interests so that our cared for children and care leavers know a little more about the people who are their corporate parents.
- 5.17. We would like to offer the opportunity for elected member to undertake **frontline visits to our social work teams and where appropriate meet our children**. It may be possible for elected member to be 'buddies' to our care leavers to gain a true sense of what life is like for them. It is hoped that these activities will bring challenge into corporate parenting committee and help the officers in charge of service delivery to shape services to better meet need. It is great that our **Portfolio Holder is also a member of our shadow committee** which will certainly give the opportunity for our young peoples views and options to be heard and for them to understand how seriously Cheshire East take our corporate parenting duties.
- 5.18. We would further like to offer the opportunity of **sharing resources** with you to continue to develop your knowledge of corporate parenting and cared for children and care leavers. This is available through a number of avenues such as the LGA or for the service to spend some time with you talking about actual children's experiences.

Update on participation with children and young people

- 5.19. **Game Changer Conference, Blackpool** - an early start at Crewe train station on Saturday 4th November saw members of the Cheshire East Children in Care Council and Care Leavers Forum gather ahead of an exciting day at the Game Changer Conference in Blackpool. On arriving at the venue, the room was already filling up with children and young people from across the North West region.
- 5.20. The conference aims are *"to create an environment for young people from Children in Care Councils and Care Leaver Services to come together with decision makers to engage in dialogue, to explore views on care services, and to debate and propose change."* Young people had an opportunity to participate in a range of activities, highlighting the issues that affect them directly to representatives from Youth Policy, Children's Commissioner and Ofsted. The young people were also joined by Afghan Dan, who gave a speech before performing at the event. Afghan Dan also delivered a workshop where the young people were able to create their own lyrics, which he then performed.

- 5.21. Following the conference, young people were given the opportunity to go onto Blackpool Pleasure Beach where they enjoyed the rides and attractions before heading home. A stop at the fish and chip shop on the way to the train station provided some warmth and full tummies before the journey back to Crewe. The young people had a good time and enjoyed the experience, with the hope that positive change will be the outcome of the conference.
- 5.22. **Xmas dinner for young people** – staff from children’s services raised around £100 to provide a celebratory Christmas dinner for young people in care/care leavers.

Appointment of New LAC Designated Nurse

- 5.23. A new Looked After Children (LAC) Designated Nurse for Cheshire East came into post in December 2017. Shan McParland’s role as the LAC Designated Nurse is pivotal to strategic planning, quality assurance and performance monitoring and is essential in advising on the provision of services for vulnerable cared for children and care leavers within the health economy. Key elements of this essential role are preventing further harm to these young people and ensuring that the complex needs of this transient group of vulnerable children and young people are understood across the health and social care economy.
- 5.24. Shan and the Head of Service for Cared for Children met to share some of the achievements and challenges in delivering good health and social care services for our children. Shan has participated in the Corporate Parenting Operational Group and input into the revision of the Corporate Parenting Strategy. Shan will be a valuable asset to service and will strive to ensure that the health of cared for children and care leavers is a priority.

Visit from National Implementation Adviser for care leavers

- 5.25. Mark Riddell, the new Implementation Adviser for Care Leavers, is due to visit Cheshire East in January.

Update on Ignition

- 5.26. By working with all partners, we are able to provide choice for young people and a process that provides them with a voice and ownership of their accommodation and future plans. Ignition is for young people aged 15½ plus who are thinking about where and how they would like to live when they leave care (we think the earlier we can plan the better the experience!). This is an innovative approach and has been short-listed for two national awards (a short film will be played at Committee that describes Ignition). Social Care commissioners from across the North West have taken the time to come and observe Ignition in full flow and have all commented on the fantastic approach that is delivering good outcomes for our Care Leavers.
- 5.27. Ignition is made up of a range of partners; Housing, Social Landlords, YMCA, P3, Supported Lodgings, Commissioning and Leaving Care, Voice for Children and private providers. Young people attend Ignition and describe their current situation and where they would like to be in the future, partners

listen and then describe what they have to offer or what they could develop to meet need. Young people are able to visit different provisions so they are able to make a more informed choice, the taster flat allows young people to experience independent living for a 2 week period with floating support to assist with budgeting, household skills, food shopping, cleaning, cooking etc...young people return home with an idea of whether they are ready to live independently and support to work on areas for development.

- 5.28. We now have a strong offer for our care leavers including taster flats, supported independent living, supported lodgings with 'hosts', dispersed properties with the offer of floating support alongside Staying Put and Staying Close arrangements, a group living house and support / acting as guarantor for individual tenancies. All of this choice would not have been possible without the successful partnerships that have developed through Ignition.
- 5.29. The panel also discuss young people who have been supported to move on; this helps ensure the placement is still meeting their needs and also helps develop our learning and placement knowledge, this whole process is very important for commissioning as it helps identify any gaps to address and good practice that we can celebrate and build upon.

Update on Signs of Safety

- 5.30. **Practice Leads for Signs of Safety** - we have identified our Practice Leads, who will be champions and leaders for good Signs of Safety practice and will support the approach to embed within their teams. Each team has at least one Practice Lead, who are at Team Manager and practitioner level. There are also Practice Leads within our key partner agencies. Practice Leads will receive additional training in Signs of Safety to support them to support their teams.
- 5.31. **Signs of Safety Training** - we are currently rolling out Signs of Safety training to our workforce. All our Practice Leads and Senior Managers across the service and partnership have now received the two day training and are starting to support their teams to use the approach. So far we have trained 106 people which includes Senior Managers including the Director of Children's Social Care and the Director of Prevention and Support. Two day training will continue in May 2018 for the Permanence and Throughcare Team, Care Leavers Team, Fostering, and Prevention Team. Some of our in house trainers will also be trained to deliver the two day training at this time so we can continue to roll out SOS training to our wider teams and partners.
- 5.32. **Aligning our Organisation with Signs of Safety** - in order to support the approach to embed we are changing our organisation and how we work so that it supports Signs of Safety practice. A large body of work is underway aligning our processes, forms, policies and procedures and practice guidance, and how we measure our performance. We have already changed the way we work at the front door to reflect Signs of Safety. The new process went live in November 2017. This has changed the questions we ask as part of the consultation process, and the way we record information, looking at the four

elements of Signs of Safety; what's working well, what we are worried about, what needs to happen, and how worried we are on a scale of 0-10. Feedback from partners has been very positive about the new approach, with partners saying that the new questions are supporting them to think differently about risk.

- 5.33. **Support for Teams from the Lead Practitioner** - we have appointed a Lead Practitioner for Signs of Safety, Louise Wright, to support teams and partners to embed the approach. Louise has a key role supporting teams to use the approach, delivering briefings and workshops, leading the Practice Lead Network, and representing the views of practitioners back to senior leaders on the Signs of Safety Project Board.

6. Wards Affected and Local Ward Members

- 6.1. Although the number of Cheshire East cared for children and young people is relatively small, they are a vulnerable cohort, who live across Cheshire East and in other local authority areas.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1 There are a number of policy implications as a result of local and national developments and these will be reported, as appropriate to the relevant Committee.

7.2. Legal Implications

- 7.2.1 The national and local developments described in this report are wide ranging and will in many particulars have legal implications. Legal advice will be sought, as appropriate, upon all relevant emerging issues.

7.3. Financial Implications

- 7.3.1 There are no direct financial implications of this report.

7.4. Human Resources Implications

- 7.4.1 There are no direct financial implications of this report.

7.5. Equality Implications

- 7.5.1 There are no equality implications as a result of this paper.

7.6. Rural Community Implications

7.6.1 None.

7.7. Public Health Implications

7.7.1 None identified at this stage.

8. Risk Management

8.1. Cared for children and care leavers are a vulnerable group that are at risk of a number of factors – poor education and training, health, safeguarding and transition into adulthood.

9. Contact Information

Contact details for this report are as follows:-

Name: Kerry Birtles
Designation: Head of Cared for Children & Care Leavers
Tel. No.: 01606 275840
Email: kerry.birtles@cheshireeast.gov.uk