

Report of the Cabinet Member Children's Services and Skills

I have been asked to report as follows for Full Council on 4 October:

1. By Councillor Hannaford on:

Legal Aid Cuts - Family Court Work in Devon including parents access to children, domestic violence and cross examination by former partners, and debt and housing issues.

2. By Councillor Brennan on:

Given the feedback from Ofsted and the CQC on the recent inspection of Devon's Local Offer for children with special educational needs and disabilities, can the Cabinet Member submit a report on the urgent action that is taking place to address the concerns? This should, in particular, cover the issues of timeliness of the assessment process, communication with parents/carers, how the quality of EHCPs will become more consistently good and appropriate to the child's needs, how children with parents who are less able to advocate for them are not left behind, and how the issue of support for children with autism, especially girls, will be addressed. In addition, although we believe that staff in the local authority, schools and our partners are working hard to make the necessary changes, will the Cabinet Member apologise to children and young people with SEND in Devon, and to their families, for the problems that have occurred?

1. Legal Aid Cuts

Background

Legal Aid was reformed in 2013 to limit the number of areas of law that would be considered within "scope" without having to pass a separate exceptional case test. Some of those areas removed from "scope" are listed above.

The Devon Perspective

None of areas listed above have a significant bearing from a Devon County Council (DCC) perspective because Legal Aid for Childcare proceedings (being the primary area of law within the Family Court with which DCC has involvement) continues to be non-means tested and within "scope". This absolute right to Legal Aid when the removal of children is in issue was never interfered with by the previous reforms.

Adult Deprivation of Liberty cases in the Court of Protection also continue to be automatically eligible for Legal Aid on a non-means tested basis, given the fundamental rights with which that area is concerned. Legal Aid for Mental Capacity Act "health and welfare" decisions is means tested but continues to be in "scope" for those who require it and cannot afford to pay themselves.

In respect of the other areas:

- Cases involving parents' access to children (known as "Contact" and "Residence") do not generally involve DCC unless there are requests for DCC Social Workers to provide reports for the purposes of assisting the Court with those proceedings (usually where there are ongoing Child in Need issues already arising). However, the report would be the limit of DCC's involvement;
- Domestic Violence cases do not involve DCC unless they impact upon ongoing Childcare proceedings. In those circumstances, the Childcare Legal Aid Certificate would address the impact of such domestic violence on the children and the consequent appropriateness of granting a Care/Supervision Order.
- Housing cases do not involve DCC as the District/City Councils are responsible for Housing issues. If there is an impact arising from the Legal Aid reforms, those Councils are best placed to address this;
- Debt cases do not involve DCC unless it is enforcing an Adult Social Care debt. If the person has assets over which DCC has sought to levy a charge, then the person is unlikely to have been eligible for Legal Aid in any event. DCC Solicitors would provide appropriate support to any litigant in person involved;
- DCC would not be involved in a case in which a partner or former partner would directly cross examine, as all parties within Childcare proceedings would be represented by a solicitor and/or barrister funded by non-means tested Legal Aid

Summary

Legal Aid for DCC's core business (Childcare and Deprivation of Liberty cases) was not changed by the 2013 reforms. However, changes to the "scope" of Legal Aid is likely to have had an effect on other areas of law that potentially touch upon DCC's core business (e.g. domestic violence for which no Legal Aid is available could ultimately lead to Childcare proceedings being commenced in respect of children living within the household in question. However, as soon as DCC Issues legal proceedings, the parents would become eligible for Legal Aid for the purposes of responding to those proceedings).

Further Reform

The Government last week published details of further Legal Aid reform due to be implemented by Autumn of this year. In summary these are:

- Expanding the scope of Legal Aid to include Special Guardianship Orders (SGOs) in private family law. This means that family members (such as grandparents) who wish to become guardians for children without fully adopting them will now receive Legal Aid to assist them with applying and understanding the implications of doing so.

This reform will be of benefit to DCC, as it currently has to directly fund a family member to receive legal representation to apply for a SGO where this is used as an alternative to a Care Order. Following the reform, such funding will be provided by Legal Aid.

- Extending eligibility for non-means tested Legal Aid for parents, or those with parental responsibility, who wish to oppose applications for Placement Orders or Adoption Orders in public law proceedings. The vast majority of parents engaged with responding to such application already get Legal Aid, as the adoption decision is made as part of ongoing Childcare proceedings. However, where a child is placed in care under a fostering for adoption placement or placed at home and a subsequent

decision is made to apply for an Adoption Placement Order, Legal Aid would not be available under the current arrangements.

This reform is considered to be of benefit to DCC because, on the relatively rare occasions when it arises, it will always be preferable to have the parent legally represented when DCC is seeking an Adoption Placement Order.

2. Ofsted and CQC inspection of Devon's Local Offer

I am very pleased that Cllr Brennan has asked her question, as it gives me an opportunity to share at full Council the findings of the recent area inspection of SEND and the actions that the partnership has put, or is putting, in place to respond to the inspection's findings and recommendations.

I want to stress that this was an area inspection not an inspection of the Local Authority and that the children's partnership has responded positively and with drive, passion and ambition to the challenge of the findings and recommendations.

The inspection findings confirmed the partnership's self-assessment. Members may be aware that for some months, Cllr Aves has been leading a task and finish group focused on Education Health and Care Plans (EHCP), precisely because we recognised the very serious impact on families of delays in fully implementing the 2014 SEND reforms. Inspectors recognised that the strategies and plans that we have in place are the right ones, but they are not yet sufficiently impacting on the lived experience of children and families in Devon.

Colleagues may have seen in the press and in a letter from the chair of the partnership to parents, the deep regret of partners about the poor experiences of families. Partners have affirmed their absolute commitment to the Improvement Programme that is delivered by the multi-agency SEND Improvement Board. I welcome this opportunity to publicly express my regret for the adverse impact on children and families and to affirm my commitment to ensuring we, as partners, make all necessary changes right across the system.

Colleagues will know that between 10 and 14 December 2018, Ofsted and the Care Quality Commission (CQC) conducted a joint inspection of Devon to judge the effectiveness of the area in implementing the special educational needs reforms as set out in the Children and Families Act 2014.

A Written Statement of Action (WSOA) is required to address four key areas of weakness identified by Ofsted and CQC and these are captured in Cllr Brennan's question;

1. Strategic plans and the local areas SEND arrangements are not embedded or widely understood by stakeholders.
2. The significant concerns that were reported about communication with key stakeholders, particularly with parents and families.
3. The time it takes to issue EHC plans and the variable quality of these plans.
4. Weaknesses in the identification, assessment, diagnosis and support of those children and young people with autism spectrum disorder.

The local authority and the area's clinical commissioning groups are jointly responsible for submitting the written statement to Ofsted no later than Friday 10 May 2019. Senior leaders in the local authority and clinical commissioning group are developing the detailed priority actions in response to the WSOA. They are guided in this by advisors from Department for Education and NHS England. The advisors reported their confidence in

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the actions being taken and the progress made since the inspection. The open and active approach has given advisors assurance of the capacity to further drive improvement.

The inspection identified strengths in relation to positive academic outcomes, support for children with the most complex needs and the strong commitment and dedication from staff across the local area. Nevertheless, there is further progress needed, with full and undivided attention, to improve the experience of families. The multi-agency SEND Improvement Board has already begun to drive those improvements.

Timeliness of assessment process & quality of EHCPs

As recognised in the inspection report; the local area has begun to implement plans to improve the timeliness and quality of EHCPs. Members may recall that the Council increased the funding in the 0-25 team, creating ten new posts to ensure we could respond to the EHCP timeliness and quality challenge.

Actions taken to date include;

- Increased senior leadership oversight and ownership of performance across education, health and care.
- Streamlined EHC assessment processes to increase efficiency and more granular performance monitoring of assessments (process and quality)
- Contract Escalation processes applied appropriately with commissioned services. For example, in relation to Babcock Educational Psychology (EP), late advice. An action plan was instigated in Autumn 2018, with weekly monitoring to clear the backlog. As of January 2019, all late EP advice has been cleared.
- Agreed multi-agency standards (based on the standards of the Council for Disabled Children) and training which set clear expectations about quality, and in particular specificity that will ensure content of EHCPs are appropriate to needs of children.
- Multi-agency quality audits to support workforce development

The rate of EHCPs being issued is now higher than the rate of requests received each week. Whilst there is still a backlog of work to complete, productivity has increased. The balance of on time/late will improve as the number of overdue plans reduces week on week. The local area is developing clear performance targets, which will be set out in the WSoA.

Communication with parents/carers

Radical change in relationships with partners and parents is required which builds on the good progress and outstanding services that are in place in some parts of the system.

Actions taken to date include;

- The Chair of the Devon Children and Families Partnership wrote to parents of children with an EHCP to reinforce the local area's complete commitment to delivering the improvement identified through the inspection. A commitment to write again in the summer term has been made to keep parents up to date with progress.
- The Head of Communication & Media is advising on better ways of communicating with all stakeholders about the local area's vision and strategic plans
- A revised EHCP format agreed with parents is in place, making the child and parent carer views and aspirations more prominent and central to the Plan.
- Pro-active written communication to parents, who are experiencing delays with their child/young person's EHCP, is now common practice
- Refresh of case management arrangements in SEN 0-25 team so parents have a single named contact which will support improved communication and relationship building from the point of request

- Refreshed partnership arrangements with the Devon Parent Carer Voice and other parent groups, for example, NAS groups, LORG and MSI

Children with autism

The inspection identified weaknesses in the identification, assessment, diagnosis and support for children and young people with Autistic Spectrum Disorder (ASD). This is not just about waiting times but how our system responds to support and plan for these children to meet their needs effectively, while undergoing and following assessment

The CCG will lead a piece of work to review the referral rates into support services. A retrospective Quality, Equality and Impact Assessment exercise will help to understand whether there has been any previous disparity between the volumes of referrals received and assessments undertaken.

Detailed actions to address concerns raised in this area will be clearly owned across education, health and social care and detailed in the WSoA.

The issue of girls and autism raised by Cllr Brennan, is an important one. Girls tend to be more skilled at identifying and responding to social cues and norms. This can mean that manifestations of autism difficulties can be 'masked' in girls. Professional judgements in identification therefore need to be fully informed.

Recent DELP training for schools achieved a good level of awareness across the County in schools about approaches to meeting needs of children with autism; follow up across SEN support services is planned to refresh and assess impact of this on children. The Communication and Interaction Team will be advising and monitoring support to identified children in schools and refocusing their work on ensuring support is embedded in practice.

Two new special schools have been agreed for children with autism needs – opening September 2019 and September 2020.

James McInnes

Cabinet Member

Children's Services and Schools