

**Minutes of the Safe and Strong Communities Select Committee Meeting held on 9 November 2017**

Present: John Francis (Chairman)

**Attendance**

Trevor Johnson	Paul Snape
Jason Jones	Conor Wileman (Vice-Chairman)
Kyle Robinson	Victoria Wilson

**Also in attendance:** Gill Burnett

**Apologies:** Syed Hussain, Natasha Pullen and Mike Worthington

**PART ONE**

**6. Declarations of Interest**

There were none at this meeting.

**7. Mr Robert Marshall**

A minutes silence was held in memorial of Mr Robert Marshall, County Councillor for Codsall (South Staffordshire) who had died on 2 November. He will be sadly missed.

**8. Minutes of the previous meeting held on 26 September 2017**

**RESOLVED-** That the minutes of the Safe and Strong Communities Select Committee held on 26 September 2017 be confirmed and signed by the Chairman.

**9. West Midlands Peer Review of Adult Safeguarding**

In February 2017 the County Council participated in a peer review of adult social services focusing on safeguarding for vulnerable adults and market management for commissioned services. At their 13 June 2017 meeting Select Committee Members received feedback on the Review and requested a report on progress implementing identified actions to address the areas highlighted for development.

The Peer Review had provided a helpful snapshot assessment of key challenges and areas of strength within the change programme for Health and Care. The findings provided confidence in the direction that was currently being taken, assured the organisation that the work to protect the most vulnerable was safe and well-structured whilst highlighting challenges around scale and capacity. The Review also identified operational enhancements required to the assessment and case management arrangements delivered through partners, which had been addressed as part of on-going work to renegotiate and reshape S75 agreements. Members received a full update of progress in respect of the identified actions.

Members were aware of the changes within home care following the recent tendering process, with new arrangements designed to address the chronic shortages of home care and give providers a guaranteed number of hours in defined geographical areas, allowing them to offer permanent contracts to staff and organise their operations more efficiently. Whilst Members understood the rationale behind this process they had concerns over the way this had been communicated to service users and providers, with some Select Committee Members having a number of complaints and/or concerns raised with them.

As part of the new home care arrangements some service users care would be transferred to new providers. Whilst their care package would remain unchanged, the individual providing that care may change, although an assurance was given that where ever possible continuity would be retained. Members were aware that some staff were being TUPEd over to the new providers, however they were also aware that others had chosen to remain with the smaller providers and asked for an update on this process. The retendering had been led by the Care Commissioning Team, working with new and previous providers to ensure all TUPE information was shared effectively and no significant issues had been highlighted during this process. It was recognised that people would make personal choices and may wish to remain receiving their care from their original provider. In such cases individual's would be able to use the direct payments system.

Members were informed that as part of the TUPE process there was an expectation that continuity of staff to service user would be sustained as far as possible, where appropriate.

Members asked whether any of those care companies that had been successful in the tendering process had previously operated under a different name and/or previously been judged as failing by the Care Quality Commission (CQC). Due diligence would have been undertaken as part of the tendering process. The CQC regulate the market and all providers needed to meet their standards and contractual requirements. As part of the procurement process the Commissioning Team would be aware of any company changes. Changes may happen where a company has failed and subsequently had a change of directors or where a company has been taken over. In either case the new company was still required to meet the CQC standards.

Poor communication was a factor in the home care changes, with unhelpful correspondence being sent to service users and with some service providers indicating they had not been consulted about the changes. Members sought reassurance that steps had been taken to mitigate the problems this had created and to ensure adequate advice was given around the option of direct payments. There was a particular concern shared that the correspondence had implied choosing to use direct payments and receiving care from a smaller provider may result in greater costs to the service user over bank holiday periods. There had been some issues with the initial letter to service users which had subsequently been addressed. The care package of individuals would not change irrespective of the change of provider and therefore there had been no requirement to undertake consultation. The County Council had provided guidance on the use of direct payments with 140 service users transitioning to direct payments so far.

Members noted that communications had been an issue highlighted within the Peer Review. Communicating with such a wide range of individuals with very different expectations and needs was recognised as challenging. However there was also a recognition that the initial correspondence had resulted in uncertainty and concern which had been addressed as soon as the issue had been identified. The Cabinet Support Member for Adult Safeguarding assured the Select Committee that this would not happen again.

Members asked for clarification of the measures in place to safeguard care home residents in scenarios where the home fails in its care and has to close. The County Council has a provider failure protocol which would be followed to ensure the safety and continued care of service users.

The Cabinet Support Member distributed leaflets produced by the Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership entitled "What do I do if I have a safeguarding concern". She urged Members to encourage individuals to report any concerns so that possible safeguarding issues could be addressed at the earliest opportunity.

The Select Committee noted the progress made with the Peer Review recommendations. They noted delays in implementing part of recommendation 3 and asked for an explanation for this delay. This related to delays in work with trade unions, however the second phase of this work was due to start shortly.

Members commended officers on the significant progress made in implementing the recommendations.

**RESOLVED-** That:

- a) the Officers be commended on the significant progress made so far in implementing the recommendations made; and
- b) a progress report on the action plan and implementation of the recommendations be brought to a future meeting.

## **10. Deprivation of Liberty Safeguards**

Deprivation of Liberty Safeguards (DoLS) provide protection for the most vulnerable people living in residential homes, nursing homes or hospital environments. The safeguards enshrined in law gave the requirement that care would always be provided in a way that was consistent with the human rights of people lacking capacity, who were otherwise protected or safeguarded through the use of the Mental Health Act or Court of Protection powers.

The Select Committee received details of the differentiation between high, medium and low priority DoLS. They were aware that the backlog of high priority cases had been reduced this year. Members asked whether low and medium priority cases were likely to escalate if no DoLS assessment was undertaken for these cases. This could happen, however providers could request a review of the assessment if they had concerns over escalation.

As a result of the dramatic increase in referrals following the 2014 Supreme Court Judgement and the subsequent decision taken by the Senior Leadership Team (SLT) and Cabinet to focus on high priority cases only, there was no likelihood of assessments being completed on medium or low priority cases with the current resource available. However it was possible to manage the high level assessment and address the backlog with the 9 Best Interest Assessors now in post.

Mental health assessments are a key element to the best interest decision of a DoLS assessment. In Staffordshire this had historically been funded by Health, however this was not the case across the Country, with local authorities funding mental health assessment in many cases. Whilst every attempt was being made to maintain this funding arrangement, residential care act money is being set aside to cover this assessment cost within the MTFS in the coming year. The Clinical Commissioning Groups (CCG) had agreed to provide the County Council with details of the costs involved with these assessments. They had also agreed to continue funding these assessments at present. If these assessments were funded by the County Council there would be a need to consider both cost and quality of any commissioned service as well as to modify the administrative process and finance structure.

Anyone deprived of their liberty had a statutory right to appeal against this deprivation. Members heard that Staffordshire currently had 14 ongoing or expected appeal cases. Staffordshire had not received any malicious appeals, with appeals most often being made by independent professionals through the Asist contract.

The Select Committee asked whether, in not addressing the low or medium priority DoLS, Staffordshire was in breach of the law and asked whether other authorities were in a similar position. Whilst the London Boroughs and some smaller urban councils such as Sandwell were able to keep abreast of their DoLS assessments, most Shire Counties were in a similar position to Staffordshire. Birmingham had spent millions on trying to meet demand but had recently accepted that for the resource required this was not sustainable and were now looking at addressing high priority cases only.

Members asked whether there was a risk of the Council being taken to court because of their breach over medium and low priority assessments. This had been part of the risk matrix considered by Cabinet when taking their decision to focus on high priority cases only. The Council had received no claims for compensation and any financial burden would more likely be in legal costs rather than compensation, as compensation would be minimal. The Council had received no criticism from the Court of Protection from any appeal case. DoLS was a safeguarding measure rather than an intervention, with any care package in the best interests of the individual.

The Law Commission published a report and draft bill in March 2017 which put forward proposals to change the legal framework for DoLS. The proposals intended to streamline the process for assessing whether a DoL was necessary and was planned to ensure that those deprived of their liberty in settings outside care homes and hospitals were covered by the new scheme. It was anticipated that this would have no additional cost to the Authority as assessment would be undertaken through the case management structure already in place. However it was unclear at present how this would affect those who were self-funding. Responses to the report had to be made by March 2018.

**RESOLVED** – That the difficulties with addressing the number of DoLS assessments, and the decision to focus on high priority cases be noted.

## **11. Work Programme**

The Scrutiny Manager informed Members of the following changes to their work programme:

- A paper had been produced around the work already undertaken by the County Council on hard to reach communities. This would be circulated to Members after the meeting ,with Members then deciding if they wished to consider any element in more detail;
- 30 January Inquiry Day on Edge of Care. The Vice Chairman would be chairing this event and Members would be asked whether they wish to take part in the session, with approximately 4 members ideally needed;
- Following a referral from the Corporate Parenting Panel around elective home education, a joint working group will be set up between this Select Committee and the Prosperous Staffordshire Select Committee to consider the issues around EHE and the significant increase in numbers; and
- Home Care had been added to the work programme for the December meeting. Members requested that the report specifically address the lessons learnt around communication.

**RESOLVED-** That the amendments to the work programme be noted.

**Chairman**