

Safe and Strong Communities Select Committee

Thursday, 9 November 2017

10.00 am

Oak Room, County Buildings, Stafford

NB. Members are requested to ensure that their Laptops/Tablets are fully charged before the meeting

John Tradewell
Director of Strategy, Governance and Change
1 November 2017

A G E N D A

1. **Apologies**
2. **Declarations of Interest**
3. **Minutes of the previous meeting held on 26 September 2017** (Pages 1 - 6)
4. **West Midlands Peer Review of Adult Safeguarding** (Pages 7 - 22)

Report of the Deputy Leader and Cabinet Member for Health, Care and Wellbeing
5. **Deprivation of Liberty Safeguards** (Pages 23 - 42)

Report of the Deputy Leader and Cabinet Member for Health, Care and Wellbeing
6. **Work Programme** (Pages 43 - 50)
7. **Exclusion of the Public**

The Chairman to move:-

“That the public be excluded from the meeting for the following items of business which involve the likely disclosure of exempt information as defined in the paragraphs of Schedule 12A (as amended) of the Local Government Act 1972 indicated below”.

Part Two

(All reports in this section are exempt)

nil

Committee Membership

Gill Burnett	Kyle Robinson
John Francis (Chairman)	Paul Snape
Syed Hussain	Conor Wileman (Vice-Chairman)
Trevor Johnson	Victoria Wilson
Jason Jones	Mike Worthington
Natasha Pullen	

Note for Members of the Press and Public

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Scrutiny and Support Manager: Tina Gould Tel: (01785) 276148

**Minutes of the Safe and Strong Communities Select Committee Meeting held on
26 September 2017**

Present: John Francis (Chairman)

Attendance

Syed Hussain	Kyle Robinson
Trevor Johnson	Conor Wileman (Vice-Chairman)
Jason Jones	Victoria Wilson
Natasha Pullen	Mike Worthington

Also in attendance: Mark Sutton

Apologies: Paul Snape

PART ONE

1. Declarations of Interest

There were none at this meeting.

2. Minutes of the previous meeting held on 13 July 2017

RESOLVED – That the minutes of the Safe and Strong Communities Select Committee held on 13 July 2017 be confirmed and signed by the Chairman.

3. Child Sexual Exploitation (CSE) in Staffordshire, to include progress against the CSAF Action Plan and information regarding Revenge Porn & Sexting

[Superintendent Tim Martin (Staffordshire Police), Robert Simpson (Regulatory Services Group Manager, Stafford Borough Council) and Dave Anslow (Manager, Children & Young Peoples Voice Project) in attendance for this item.]

The Select Committee received regular reports on the work the County Council and its partners undertake to address Child Sexual Exploitation (CSE). CSE remains a priority for both the Stoke-on-Trent and Staffordshire Local Safeguarding Children Boards (LSCB). The Child Sexual Abuse Forum (CSAF) was established jointly by the two LSCBs and their partners as an effective way to share information, coordinate and drive the work to address sexual abuse and to hold agencies to account for promoting effective local working together arrangements.

Members watched a DVD entitled “For the Whole World to See”, produced by Burton and South Derbyshire College, which showed the possible consequences of sexting. The Select Committee felt this was an excellent tool to use in schools and more broadly within the community to help raise awareness of the consequences of sexting and specifically the illegal nature of taking, owning and sharing such pictures. They were informed of the breadth of work undertaken to address the current perception that

sexting was “normal” and the importance of delivering the message in an age appropriate way and in a format that young people take note of, ie not using posters or leaflets but making good use of social media. In general delivery of awareness raising in schools via a third party worked better than delivery from school staff as pupils tended to find this less awkward.

Whilst it was important to ensure young people were aware of the illegal nature of sexting there was no intention to criminalise them. However once an image was shared on social media it became available world wide and there were examples of blackmail and exploitation resulting from sexted images. It was important for young people to understand the implications of how these images could be used. Members also felt that it was crucial for parents to be educated on this issue.

Members were aware that schools had the discretion to determine what issues were raised within their Personal, Social, Health & Economic (PHSE) lessons and the manner of delivery. However they felt strongly that use of the DVD should be encouraged. It was suggested that one way to support the awareness raising and use of the DVD was via the Governing Body, with governor training raising awareness and advising governors to check how their schools were addressing the issues and challenge where this work wasn't being done.

Members also heard that whilst every effort was undertaken to work together to remove on-line images, technology advanced at such a pace it was not always a straight forward process. Operation Safenet continued to work to address this sort of issue, however preventing the images being taken and/or shared was key to reducing the risks involved in sexting.

Members noted that there was an identified inconsistency in the delivery of PHSE education across Staffordshire schools. The need to develop better relatable and interactive resources to help support the delivery of PHSE around safeguarding issues had been agreed and the Office of the Police and Crime Commissioner (OPCC) was now funding a post to take this work forward. Members asked to be kept informed of progress made on the production of this resource and the take-up by schools. It was anticipated that development of this resource would take between 6 and 12 months.

The Select Committee raised the issue of the LGBT (Lesbian, Gay, Bisexual and Transgender) community which was not explicitly mentioned within the report. There was a concern that staff in schools may be unsure how to deal with LGBT pupils which by default made them vulnerable. It was recognised that this group of young people were a potential vulnerable group and that this would be recognised within future reports.

The Select Committee heard that since the last update on 16 January 2017: the CSAF had held two meetings; the temporary post of CSE coordinator for Staffordshire and Stoke-on-Trent had been filled; and Staffordshire's Children's Social Care Services had engaged in a pilot “Inspection of Children's Social Care Services”, which had identified that the strategic and operational work to manage CSE was effective and timely in Staffordshire. A review of the CSE Action Plan had also been undertaken by the CSE coordinator and presented to the CSAF at their meeting on 25 April 2017. The revised

action plan had been extended to 2017-2020 and was aligned with the requirements set out in the CSE Strategy.

Following a mapping exercise around governance it had been agreed that the CSAF should focus on CSE and intra-familial CSE. Whilst the governance for Female Genital Mutilation (FGM), Honour Based Violence and Forced Marriage should sit with the newly established Staffordshire and Stoke-on-Trent Domestic Abuse Commissioning and Development Board. This Board was undertaking a scoping exercise in respect of the delivery of the Violence Against Women and Girls Strategy. As an interim measure during this exercise the Joint LSCB FGM Policy and Procedure was updated and disseminated to front line staff, including a recent LSCB briefing on FGM to help frontline staff recognise and respond to children at risk of FGM.

The Select Committee had previously heard that some aspects of the CSE Outcomes Framework had been piloted for a five month period in East Staffordshire, Staffordshire Moorlands and Stoke-on-Trent. A trial dataset had been produced and reported to the Framework Steering Group highlighting differentiations in data recording across organisations, resulting in a sub-group established to clarify required datasets and reporting mechanisms.

Members noted that as a result of evidence gained from a consultation with 200 young people the OPCC had financed a campaign to challenge young people's attitudes towards parties and help them stay safe, address the perception that sexting was normal, improve understanding of what constituted consent and support and encourage parents to talk to their children about staying safe. Members were particularly pleased to note the development of a new immersive 360 degree/smart phone technology app that gave a virtual reality video to help young people analyse the potential risks of a party.

Members noted that funding for the Staffordshire Police Preventing CSE Team had finished in March 2017. However from 1 September 2017 Catch22 were providing lower level CSE Prevent interventions as well as dealing with all missing children return interviews.

The Select Committee noted the recent pilot Ofsted inspection of Staffordshire's Children's Services, achieving a "Good" grading again, with progression in all areas since the last inspection in 2014. The following section of the Ofsted report was shared with Members:

"When social workers identify concerns regarding children at risk of sexual exploitation, they take timely and effective protective action. Clear processes are in place to ensure strategic oversight of concerns relating to sexual exploitation, through the child sexual abuse forum. District child sexual exploitation panels ensure a coordinated multi-agency response to managing risk.

The response to children who go missing is rigorous. The 'missing' coordinator proactively tracks and monitors all 'missing' incidents, including those of children placed in the area by other local authorities. A commissioned resource and an in-house service provide 'return' interviews. Most 'return' interviews are detailed and analytical and include the right information to inform subsequent intervention to help safeguard children. The strategic

missing board oversees practice effectively, identifies themes and trends and considers wider planning. "

Members congratulated the Service for this achievement.

Where a young person was subject to a protection plan a member of the Voice Project visited them at school to ensure that their voice was heard as part of that plan. However Members shared concerns that this was only done where parental consent was given. They felt that those young people whose parents refused consent were likely to be those children who most needed their voice to be heard, but understood that the majority of parents gave their consent.

The Select Committee received an update to the report from Mr Robert Simpson, which outlined the process for the CSE inter-authority audit on the Staffordshire and Stoke-on-Trent Responsible Bodies Group (SSRBG). The Audit reports were to be submitted by 31 December 2017 in order for a summary report to be taken to the 12 January 2018 SSRBG. Mr Simpson also wished to record his gratitude to Staffordshire Police for their support in this work and in organising sting operations to back up the work of the SSRBG.

Members noted that of the 2,700 applications to work on the Council's regulated activity home to school contracts 550 individuals had been identified with DBS (Disclosure and Barring Service) traces which resulted in the individual being interviewed. Of the 550 interviewed, 103 applicants were deemed unsuitable to work on the Council's contracts. On seeking clarification Members were informed that the DBS "trace" meant that there was something flagged on their DBS check as worth note, which could include points on a driving licence. The DBS enhanced system with the new add-on update service now allowed checks to be made at any time and therefore the most current information could be accessed.

There was some concern over the checks on escorts employed as part of the Council's passenger system. Members understood that all escorts were DBS checked but had concerns that there was no way to stop identification cards being swapped. Identification cards all included a photograph of the individual. "Soft intelligence" from the driver and the school also helped to inform officers about any potential risk or possible difficulties with individuals.

RESOLVED – That:

- a) schools be encouraged to use the DVD "For All the World to See" in their PHSE lessons;
- b) School Governor training includes the issue of sexting, with Governors made aware of the resources available and encouraged to investigate the work undertaken by their school in addressing this issue;
- c) the Select Committee receive an update in 6 months on the OPCC funded post to develop PHSE resources around safeguarding in its broadest sense and the take-up by schools; and
- d) LGBT groups are addressed within future reports.

4. Cabinet Response: Preventing Low Level Neglect of Children in Staffordshire'

The Safe and Strong Communities Select Committee formed a working group to consider Low Level Neglect with the focus of their report being around early identification and prevention. The Working Group's report was endorsed at the Select Committee meeting of 8 June 2016. The report was then submitted to the Cabinet Member for Children and Young People who verbally confirmed he accepted the vast majority of the recommendations at the Select Committee meeting of 8 July 2016, with a formal written response and progress report on implementation of the recommendations at their 6 March 2017 meeting.

The Select Committee now received details of the progress made and Members thanked the Cabinet Member for his work in addressing the Working Group's recommendations.

The Select Committee requested an organogram showing the governance model for this area of work and identifying the relationship between the different groups involved.

RESOLVED – That:

- a) the Executive Response and progress with any outstanding items on the Action Plan be noted;
- b) the Cabinet Member for Children and Young People be thanked for the progress made in addressing the Working Groups recommendations; and
- c) an organogram of the governance model and relationship between the groups involved in this work be forwarded to Select Committee Members.

5. Work Programme

The Select Committee noted that a request had been made for the Staffordshire and Stoke on Trent Adult Safeguarding Partnership Board Annual Report to be moved from the Select Committee's November meeting to their December meeting to enable the Board to agree their annual report before this was shared with the Select Committee. This would also enable the Adult and Children's Safeguarding Partnership Board Annual Reports to be presented at the same meeting.

At the Chairman's request the December meeting had been moved from 11 December, 2.00pm, to Tuesday 12 December, 10.00am to avoid an afternoon meeting.

Members also noted that their proposed scrutiny review into Children's Centres would be postponed as centres were currently undergoing considerable change and the review would be more apt after the changes had taken place.

Members raised concerns over a local newspaper report from 14 September that had suggested there had been a significant rise in the number of children suffering neglect in Staffordshire, with an increase of 255 in 2016/17. The article had been based on the NSPCC national report showing the number of cases of neglect reported to them, however whilst the number reported through the NSPCC had risen, the number overall within Staffordshire had stayed the same. It was the method of reporting that had changed in that, following a successful advertising campaign, more people were reporting cases of neglect through the NSPCC rather than routes previously used.

Edge of Care - Scoping Report

The Select Committee received a scoping report setting out details of a proposed scrutiny review into why more children were entering care in Staffordshire, the impact this had on the Council and the mechanisms in place to prevent children from coming into care. Members agreed to undertake the scrutiny review.

RESOLVED – That:

- a) the amendments to the Work Programme be noted; and
- b) and the scoping report and terms of reference for the Edge of Care Scrutiny review be agreed.

Chairman

Local Members' Interest
N/A

Safe and Strong Communities Select Committee – 9th November 2017

West Midlands Peer Review of Adult Social Services

Recommendations

It is recommended that:

1. The committee scrutinise the content of the report and comment upon the progress made in respect of the findings of the peer review and proposed actions to address the issues raised.
2. The committee request a closure report in respect of the actions to address the areas for improvement highlighted through the peer review at the end of the current financial year (2017/18).

Report of Cllr Alan White, Deputy Leader and Cabinet Member for Health, Care and Wellbeing

Summary

3. The purpose of this report is to provide the Committee with information in respect of the progress made in addressing the areas for development identified following the recent peer review within adult social care.

Report

Background

4. In February 2017 Staffordshire County Council participated in a peer review of adult social services focusing on safeguarding for vulnerable adults and market management for commissioned services. The outcomes of the peer review have been reported to the Committee previously and a further report detailing progress in respect of the actions identified to address the areas of development highlighted by the review was requested at this time.
5. The peer review programme in the West Midlands is part of the Sector Led Improvement approach. The mechanism locally involves a small team containing senior officers from other local authorities, an Elected Member from another local area and an Expert by Experience (in this instance a former carer) underrating a review of documents, interviews Elected Members, staff, partners and clients of the service during three days on site. As part of the process an audit of care management files is also undertaken in advance of the site visit to assess and review social work practice.

6. The scope of the peer review in Staffordshire was to consider two key areas of activity related to safeguarding vulnerable adults and the way in which we manage the social care market.
7. As part of the review the team were asked to consider the following key questions within their assessment of our approach:

Adult safeguarding

- a. Are our thresholds for investigation and intervention set correctly: have we got the right balance between ensuring safety and promoting positive risk taking
- b. Are processes as streamlined as possible?
- c. Are we meeting the requirements of the Care Act and are we demonstrating Making Safeguarding Personal?
- d. Where we are working jointly with the NHS is this adding value or creating difficulties?

Management of the local care market

- a. How fragile is the market compared to other areas – what is our relative level of risk?
 - b. What are we doing to promote sustainability; are these the right things; is there anything else we could be doing?
 - c. Are we meeting the requirements of the Care Act?
 - d. What are we doing jointly with the NHS in terms of shaping the market; is NHS involvement in the local care market making it more or less sustainable from a local authority perspective; could/should we do more/differently?
8. The Peer review provided a helpful snapshot assessment of the key challenges and areas of strength within the change programme for Health and Care. The findings also provided confidence in the direction that is currently being taken, assured the organisation that our work to protect the most vulnerable is safe and well-structured but did highlight some challenges around scale and capacity that we needed to address. In addition, there were operational enhancements required to our assessment and case management arrangements delivered through our partners, which have been addressed as part of our on-going work to renegotiate and reshape S75 agreements.
 9. A full update of progress in respect of the actions identified to address the issues raised through the peer review is presented for consideration by Members at appendix A to this report however the key areas of activity which link to our current priorities within Health & Care are highlighted below:
 10. **Brokerage** – the brokerage function has successfully transferred from SSoTP to Care Commissioning. Although work is required to ensure effective brokerage of care to support discharges from hospital, performance in respect of the time taken to source packages of care has improved following the transfer. In the year to date the Brokerage function has sourced 71% of all types of care within target timescales, an average of 8.31 days. As part of this the average time to broker

home care has reduced from 16.55 days (before the transfer) to 7.24 days (post transfer).

11. **Resource allocation & caseload** – demand and capacity modelling has been undertaken for services delivered within SSoTP, Adult Learning Disability Team (ALDT) and SSSFT. This work has informed workforce reshaping that will result in more effective delivery to citizens and appropriate caseloads for workers whilst also releasing efficiencies to the value of £4.2M contributing positively to the MTFs challenge faced by the organisation.
12. **Dynamic Procurement System (DPS)** – work to review the use of the DPS and its implementation has now been completed to ensure an appropriate balance between cost and quality in the selection of providers. The new system is now ready to launch and take up from providers has been positive in terms of joining the framework, particularly within Learning Disability.
13. **Homecare** – the Council has completed a tendering process following a comprehensive market analysis including an assessment of care costs and awarded new contracts for home care, with 39 block contracts of 600 hours each awarded to 10 providers, and 65 providers appointed to ‘pay as you go’ framework contracts. The new arrangements have been designed to address chronic shortages of home care, and give providers a guaranteed minimum number of hours in defined geographical areas so that they can offer permanent contracts to staff as well as organise their operations more efficiently. The Council is now proceeding to mobilise the new contracts. This means transferring some people’s care to the new block contract providers. People’s care will not change and we have written to existing providers to remind them of the contractual position, which is for them to continue to provide care until it can be handed over to the new provider. The Council has written to all new and existing providers with the details of clients whose care will transfer to request they co-ordinate a safe handover of packages over the next few weeks and months.
14. **Front Door Pilot** – changes to the way in which we support citizens at the first point of contact through the “front door” within Staffordshire Cares has been commenced. This work is part of our approach to the appropriate management of demand to support more people at first contact only passing those who are likely to be eligible through to social care teams for full assessment. The front door pilot is focused towards better use of information and advice and screening assessments by placing social care staff within the contact centre to understand potential eligibility of those contacting the service. The pilot is due to run through to the end of the year and will inform further work over the coming years. Performance monitoring data identifies that around an additional 10% of contacts are resolved at the front door.

Link to Strategic Plan – The activities assessed through the peer review and the actions taken to address the findings of that review support two of the strategic priorities of the Council, these being to ensure citizens are able to:

- Be healthier and more independent
- Feel safer, happier and more supported in and by their community

Link to Other Overview and Scrutiny Activity – N/A

Community Impact – N/A

Appendices/Background papers

Appendix A – Staffordshire Health and Care Peer Review Recommendations & Improvement Actions

Contact Officer

Name and Job Title: Andy Sharp, Adult Social Work & Safeguarding Lead

Telephone No.: 01785 276841

E-mail: Andrew.sharp@staffordshire.gov.uk

STAFFORDSHIRE ADULT SOCIAL SERVICES PEER REVIEW RECOMMENDATIONS & IMPROVEMENT ACTIONS

Recommendations	Actions	Lead Officer	Delivery Date	Progress Update (October 2017)
R1 Condense the broad range of priorities and strategies and create a vision for adult social care	As part of the business planning process for 2017/18 we will be developing a consolidated adult social care “plan on a page” which will be made available to staff across all delivery organisations.	Andy Sharp	April 2017	COMPLETED The plan on a page has been developed as part of the programme approach within Health & Care and has been presented to staff across all delivery organisations through away day and conference sessions held across the county.
R2 Ensure everyone has smarter, clearer information about change supported by a communication plan.	A roadshow for staff delivering adult social care responsibilities will be developed and delivered for 2017/18 to ensure a shared understanding of the social care agenda.	Richard Harling	July 2017	COMPLETED Away day and conference sessions have been held across the county.
	A communications strategy is to be developed to ensure that we optimise opportunities to engage with staff across the adult social care delivery landscape.	Richard Harling	May 2018	IN PROGRESS A strategy is currently being developed through a series of staff working groups developed following the away day and conference sessions.
R3 Review safeguarding thresholds and pathways to ensure risk and responsibility is consistent and more effective	The findings of the Peer Review in respect of the Safeguarding Agenda are to be presented to the Staffordshire & Stoke Safeguarding Adults Board with a clear expectation that these partnership issues will be addressed.	Stuart James	June 2017	COMPLETED The findings of the review have been presented and discussed with the Safeguarding Adults Board.

	<p>The Council will develop training for the Probation service in respect of eligibility for care support for offenders to manage the volume of activity within SCC; this will improve outcomes and reduce inappropriate cost apportionment.</p> <p>As part of the targeted programme of reviews within IF all learning disability cases that the Council have picked up through MAPA will be evaluated to ensure appropriate use of eligibility and to test that outcomes are being delivered in the most cost effective manner.</p>	<p>Jo Sutherland</p> <p>Terri Wolfrey</p>	<p>August 2017</p> <p>September 2017</p>	<p>DELAYED UNTIL OCTOBER 2017</p> <p>Work in this area has been delayed until the recently appointed Statutory Services Lead & PSW joins the organisation in October 2017.</p> <p>IN PROGRESS</p> <p>Due to delays in the ability to implement structural changes within the Adult Learning Disability Team (formally IF) due to corporate issues, progress in this area is slower than had been anticipated. However resources have been allocated to take this work forward as part of a programme of review activity to be completed this year.</p>
R4 Undertake a full risk assessment of the brokerage model to ensure sufficient quality and capacity for care provision.	<p>The revised adult social care pathway has been presented to manager and staff within SSOTP and arrangements for brokerage are now well understood.</p> <p>Guidance in respect of the assessment and case management process has been developed to support the pathway and will be made available to all staff.</p>	<p>Nick Bowyer</p> <p>Nick Bowyer</p>	<p>Complete</p> <p>April 2017</p>	<p>COMPLETE</p> <p>COMPLETE</p> <p>Guidance has been circulated and is regularly updated.</p>

	<p>A mechanism to support the management of change in respect of assessment and case management within partner organisations is in place and will be enhanced further in 17/18.</p> <p>Capacity modelling for brokerage has been undertaken and resources allocated accordingly however mechanism are in place to test effectiveness post “go live” linked to governance arrangements that will allow for corrective steps to be taken as required.</p>	<p>Amanda Stringer</p> <p>Bev Jocelyn</p>	<p>June 2017</p> <p>Complete</p>	<p>COMPLETE</p> <p>COMPLETE</p>
R5 Review assessment caseloads to ensure an appropriate level of skill and effectiveness to meet organisational and safeguarding requirements	<p>Caseloads are reviewed on a regular basis through operational management arrangements and the recently published care management manual provides guidance in respect of appropriate levels.</p> <p>Resource allocation modelling is to be undertaken across all delivery partners utilising a regionally recognised tool.</p>	<p>Nick Bowyer</p> <p>Amanda Stringer</p>	<p>Complete</p> <p>Complete for SSOTP / IF</p>	<p>COMPLETE</p> <p>COMPLETE</p> <p>Demand and capacity modelling has now been completed for SSOTP, Adult Learning Disability and SSSFT.</p>
R6 Co-produce a set of values and behaviours with the workforce and partners to deliver the vision	<p>As part of the development of the “plan on a page” we will ensure that the principles and core values developed by Health & Care are widely understood. We will also utilise the roadshow arrangements in 2017/18 to test these values and principles for potential refinement in 18/19.</p>	<p>Andy Sharp</p>	<p>September 2017</p>	<p>COMPLETE</p> <p>A purpose and principles document has been produced for the Adult Social Care & Safeguarding Service.</p>

	The Council have developed a set of strategic workforce priorities and principles which we are currently working with delivery partners to refine. Delivery partners will produce workforce development plans to establish a culture which promotes independence and reduces variation in practice.	Nick Bowyer	May 2017	COMPLETE The workforce principles document has been developed and expectations of partners in this respect are expressed within our S75 agreements.
R7 The transformation plans and resources should be targeted at your greatest risk area - older people	The Directorate in conjunction with the TSU have identified priority areas of activity for the coming year as part of the Council wide business planning process. This mechanism is designed to ensure that resources are targeted within the areas of greatest risk.	Richard Harling	March 2017	COMPLETE Resources are targeted to deliver against our priorities and arrangements are in place to continually review deployment through Health & Care SLT.
R8 Intelligence should be used more effectively to shape future strategic commissioning	Significant work has taken place to develop and enhance performance recording and reporting which will support this objective in the coming months. Insight information is used to support the production of commissioning strategy but this has in the past been ad hoc in nature. Following the development of additional commissioning capacity within the Council, the use of this information will become more embedded.	Andrew Jepps Lead Commissioners	Complete On-going	COMPLETE IN PROGRESS A standard process for commissioning projects and strategies is being produced by the Market Development and Quality Assurance service area, with the process due to be approved at October's Care Commissioning Board.

	As part of the creation of a revised leadership structure for Health & Care, strategic links between public health and social care will be strengthened allowing for a greater focus upon the production and use of the Joint Strategic Needs Assessment (JSNA).	Andrew Jepps/Karen Bryson	On-going	IN PROGRESS We have undertaken joint work relating to prevention and also mental health, as the first stages of operationalising these links.
R9 Develop an engagement strategy with people who use care and support to ensure an active role in quality and service improvement	Engagement arrangements across client groups are currently service area specific. An engagement strategy is to be developed which will ensure a consistent approach across all areas. A co-production tool-kit to support the implementation of an engagement strategy will be developed by adult social work and safeguarding.	Andrew Jepps Andy Sharp	September 2017 September 2017	IN PROGRESS The Health and Care Stakeholder Engagement Strategy which sets out minimum standards and principles of engagement, and a commissioner toolkit including resource mapping are both at final draft stage. The draft strategy and toolkit will be presented to Care Commissioning Board on 24 th October for sign off, discussion and agreement on how to embed the toolkit in commissioning practice.
R10 Undertake independent quality case file audits; including safeguarding activity to understand risk and the impact of change	A case file audit mechanism is already in place related to Safeguarding as part of our work within the Safeguarding Adults Board; however we will work to expand this in the coming year.	Andy Sharp	June 2017	COMPLETE

	<p>A process of undertaking external assessment or validation of case files is currently being considered in conjunction with our main provider partner SSOTP.</p> <p>Mechanism for the internal validation, audit and testing of practice through case file audits are to be developed by the Principle Social Worker during 17/18.</p>	<p>Andy Sharp</p> <p>Nick Bowyer</p>	<p>TBC</p> <p>September 2017</p>	<p>COMPLETE</p> <p>A mechanism to enact external validation if required is included within the S75.</p> <p>COMPLETE</p> <p>An audit tool is in place and being used across organisations.</p>
IC1 DPS: consider use of quality as well as price only as the basis for competition and awarding placements	The approach to DPS is currently being re-evaluated in respect of the price and quality apportionment.	Andrew Jepps	March 2017	<p>COMPLETE</p> <p>The criteria for the DPS have been amended.</p>
IC2 Need an adult social care prevention plan	<p>During 17/18 we will review the preventative offer for people with a learning disability to consider how independence can be maximised and the ongoing cost of care reduced</p> <p>An adult social care prevention strategy has been developed and we will continue to explore opportunities to accelerate the prevention agenda in with Public Health.</p>	<p>Karen Webb</p> <p>Karen Bryson</p>	<p>September 2017</p> <p>On-going</p>	<p>COMPLETE</p> <p>This work has been completed as part of the development of a revised operating model for Adult Learning Disability.</p> <p>COMPLETE</p> <p>The prevention strategy has been developed and implemented.</p>
IC3 Need to model cost of long term care based on demand and price increases and reconcile to MTFS	Modelling takes place on an annual basis, as part of the revisions to the planning cycle this will now take place earlier in the year with closer links to the development of the MTFS, managed through Health & Care SLT.	Andrew Jepps/Sara Pitt	July 2017	<p>COMPLETE</p> <p>The analysis of demand and demography has been completed earlier in the planning cycle and is informing the Cabinet challenge process.</p>

	Health & Care SLT will be undertaking challenge sessions across all areas of activity to ensure delivery of MTFS targets and early identification of future challenges and mitigations.	Richard Harling	April 2017	COMPLETE Challenge sessions have been undertaken across all areas of activity and the outcomes have informed proposals now subject to further challenge via the Cabinet process linked to MTFS.
IC4 Check policy and approach to inflationary uplifts in long term care	Financial modelling has taken place to uplift Care Fees to promote sustainability in the market supported by a series of Provider engagement events and a survey for Providers to comment on the proposals or submit counter proposals.	Andrew Jepps	Complete	COMPLETE
	A robust modelling exercise has been carried out as part of the contingency planning for domiciliary care which evidences that a sustainable service can be delivered within the proposed rates with a healthy profit margin.	Andrew Jepps	June 2017	COMPLETE The tendering exercise for the domiciliary care framework has been completed and we are currently entering the mobilisation and implementation phase.

	The feedback received from Providers during the engagement events is being taken into consideration pending the final decision on the uplifts to be applied for 17/18 which includes suggestions for the implementation of DPS.	Andrew Jepps	March 2017	COMPLETE Rates have been set as part of the recently completed domiciliary care framework tender.
IC5 Explore opportunities for joint commissioning with the NHS focused on discharge to assess and CHC	In the coming months we will analyse CHC spending profiles and the provider marketplace to evaluate the opportunities for joint commissioning.	Andrew Jepps	July 2017	COMPLETE Agreement has been reached for the Council to lead some commissioning areas on behalf of our health colleagues.
	Additional capacity to support the development of approaches to joint funding arrangements is to be created within the adult social work and safeguarding area in early 17/18.	Andy Sharp	May 2017	IN PROGRESS Some additional capacity has been secured through IBCF at Advanced Practitioner level and this worker is supporting Adult Learning Disability and SSoTP operationally. At a strategic level, planned additional capacity has not yet been released due to delays in the restructuring of Adult Learning Disability. However, the first phase of the structure change is now progressing and it is anticipated that a new role of Joint Funding Lead will be appointed to in October 2017.

IC6 Review approach to market management and ensure that quality issues are reflected in commissioning intentions	Formal reviews will take place as part of the internal governance arrangements linked to the Care Commissioning Board.	Andrew Jepps	On-going	IN PROGRESS This work takes place on a regular basis through the Care Commissioning Board.
	The Market Position Statement and associated commissioning intentions will be refreshed and published.	Andrew Jepps	July 2017	DELAYED - IN PROGRESS Currently a draft has been developed for All Age Disability, and Older People and work to develop a document for Mental Health has commenced.
IC7 Need to redesign Care Director to ensure accurate recording of information - and then enforce this through performance management	We are currently working towards the delivery of an upgrade to the current version of Care Director which will enhance performance within the system.	Jan Cartman-Frost	January 2018	IN PROGRESS The work to deliver the upgrade to version 5 of Care Director is currently underway.
	Information recording through delivery partners for assessment and case management is being addressed through the redefined S75 agreements and linked to performance reporting and management mechanisms.	Andy Sharp	April 2017	IN PROGRESS Core reporting and recording requirements have been agreed with SSoTP as part of the S75 and compliance levels in this area are high. Work to agree recording requirements with SSSFT as part of the re-negotiation of our Mental Health S75 continues.

	Enhanced performance reporting arrangements are currently under development and will be in place for 17/18.	Andy Sharp	April 2017	COMPLETE Enhanced performance reporting arrangements are in place.
IC8 Review the access service to explore opportunities for faster intervention and greater diversion	As part of our programme of work for the coming financial year we will undertake business process mapping with the Front Door linked to a pilot change programme to consider opportunities for faster interventions at lower cost, for example through assistive technology.	Nick Bowyer	September 2017	IN PROGRESS A pilot for enhanced and professionalised support at the Front Door is currently underway. Early indications show an increase in appropriate diversion rates of around 10%.
FA1 Need to ensure that there are current Section 75 agreements in place with the three Health Trusts	Work to develop revised S75s for SSOTP and SSSFT are well advanced with a view to these being in place early in 2017/18.	Andy Sharp	SSOTP April 2017 SSSFT October 2017	COMPLETE IN PROGRESS
FA2 Ensure that there is a governance structure in place for the delivery and performance management of adult social care across the three Health Trusts and that this is written into Section 75 agreements	As above – the revised S7s will contain clear governance and accountability arrangements and robust performance schedules.	Andy Sharp	SSOTP April 2017 SSSFT October 2017	COMPLETE IN PROGRESS
FA3 Establish a single social care pathway across all four ACM organisations that is Care Act compliant and review how eligibility is applied across the county	The single pathway design work has been completed to be in place by April 2017 linked to the production of a practice guidance manual which contains eligibility assessment requirements.	Andy Sharp	April 2017	COMPLETE

	Further work to embed the new pathway and the use of eligibility criteria is currently being developed for implementation in 2017/18.		September 2017	COMPLETE
FA4 Reviewing safeguarding arrangements to ensure that they are clear and that the appropriate forms for safeguarding concerns and enquiries are on case files	The PSW and Safeguarding Lead are currently developing a file audit process linked to a Quality Assurance framework, which will address this issue.	Stuart James	July 2017	COMPLETE
FA5 Developing a culture of practice that implements and embeds Making Safeguarding Personal	This is a significant agenda which will be led by the Statutory Services Lead (&PSW) once a permanent appointment is made.	Jo Sutherland	March 2018	NOT YET STARTED
	Discussions are taking place with the Staffordshire and Stoke Safeguarding Adults Board in respect of their role to support MSP.	Andy Sharp	August 2017	IN PROGRESS
FA6 Establishing a practice quality assurance framework and structure for case file auditing across the four organisations	The PSW and Safeguarding Lead are currently developing a file audit process linked to a Quality Assurance framework, which will address this issue	Stuart James	July 2017	COMPLETE
FA7 Ensuring carers assessments are offered and provided across the county	A workstream to develop consistent approaches to the delivery of carers assessments and services is included in the programme for 2017/18 and has been identified by the Directorate as a priority area.	Andy Sharp	March 2018	NOT YET STARTED
FA8 Developing skills and knowledge to implement a strengths based/assets assessment approach to social work	This will be addressed through the implementation of the Practice Guidance Manual. Discussions around workforce development approaches are taking place with the Corporate OD Team.	Andy Sharp	March 2018	IN PROGRESS

FA9 Reviewing the purpose of case recording across organisations to improve quality and develop consistency	This will be addressed through the implementation of the Care Management Manual and the performance requirements for SSOTP as part of the S75.	Andy Sharp	April 2017	COMPLETE
FA10 Building on the positive work being undertaken in one organisation with Social Workers to improve consistency and quality of social work practice and the learning and development needs of the workforce across the county	This will be addressed through the implementation of the Care Management Manual and the workforce development strategy	Andy Sharp	April 2017	COMPLETE

Local Members' Interest
N/A

Safer and Stronger Select Committee – 9th November 2017

Deprivation of Liberty Safeguards

Recommendation

1. The Select Committee to consider and provide their views on the Deprivation of Liberty Safeguards: update on the impact of central government cuts on assessments

Report of Cllr Alan White, Deputy Leader and Cabinet Member for Health, Care and Wellbeing

Summary

What is the Select Committee being asked to do and why?

2. The Safer and Stronger Communities Select Committee is being updated on progress relating to the Deprivation of Liberty Safeguards.

Report

Background

3. The Deprivation of Liberty Safeguards (DoLS) provide protection for the most vulnerable people living in residential homes, nursing homes or hospital environments; the safeguards enshrine in law the requirement that care will always be provided in a way that is consistent with the human rights of people lacking capacity, who are not otherwise protected or safeguarded through the use of the Mental Health Act or Court of Protection powers.
4. DoLS apply to anyone:
 - a. aged 18 and over
 - b. who suffers from a mental disorder or disability of the mind – such as dementia or a profound learning disability
 - c. who lacks the capacity to give informed consent to the arrangements made for their care and / or treatment and
 - d. for whom deprivation of liberty is considered, after an independent assessment, to be necessary in their best interests to protect them from harm.
5. The safeguards cover patients in hospitals and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements.

6. The safeguards are designed to protect the interests of an extremely vulnerable group of service users and to:
 - a. ensure people are given the care they need in the least restrictive way
 - b. prevent arbitrary decisions that deprive vulnerable people of their liberty
 - c. provide safeguards for vulnerable people
 - d. provide them with reviews and rights of challenge against unlawful detention
 - e. avoid unnecessary bureaucracy
7. If there is no alternative but to deprive such a person of their liberty, the Safeguards say that a hospital or care home (the Managing Authority) must apply to the local authority (the Supervisory Body) for authorisation.
8. Good practice dictates that DoLS should only be put in place where it is absolutely necessary and for the shortest period of time, with a maximum authorisation of 12 months. A further application is therefore needed for subsequent DoLS authorisations.
9. On 19th March 2014 the Supreme Court delivered its judgment on P v Cheshire West and Chester Council and P & Q v Surrey County Council in which it considered Deprivation of Liberty. The ruling means that substantial numbers of people who lack the capacity to make a decision about their admission to hospital or placement in a care home will now be considered to be deprived of their liberty.
10. It is clear that the intention of the Court was to extend the safeguard of independent scrutiny. They said that “a gilded cage is still a cage” and that “we should err on the side of caution in deciding what constitutes a deprivation of liberty”.
11. The Court has now confirmed that there are two key questions to ask, which they describe as the ‘acid test’:
 - a. Is the person subject to continuous supervision and control? And
 - b. Is the person free to leave? (This is no longer just about a person saying they want to leave or attempting to leave and now includes if they would be stopped if they did try to leave).
12. This means that if a person lacks capacity, is subject to both continuous supervision and control and not free to leave they are deprived of their liberty and an authorisation from the local authority should be sought.
13. The Court also indicated that the following are no longer relevant when deciding if a person is deprived of their liberty:
 - a. The person’s compliance or lack of objection;
 - b. The reason or purpose for the placement / admission or restriction
 - c. Comparison with what you would expect for someone in a similar situation.

14. Applications for DoLS up until March 2014 had been steadily increasing; this increase was met by training additional assessors across all the partner agencies.
15. Due to the Supreme Court judgement in March 2014 and in essence the lowering of the threshold of what is considered a deprivation of liberty applications increased dramatically.

DoLS application data

2009-2010	69
2010-2011	123
2011-2012	168
2012-2013	208
2013-2014	289
2014/2015	2213
2015/2016	3341
2016/2017	3388
2017/2018	1325 (Apr-September 2017)

16. DoLS applications are made by care homes and hospitals where the person is funded by SCC or Staffordshire CCG's or the person is self-funding residing in Staffordshire. The care home or hospital establishes that the person in question lacks capacity to make decisions about their accommodation arrangements and that they meet the threshold in relation to deprivation of liberty.

Additional DoLS grant

17. As a response to the surge in DoLS referrals (nationwide) the Department of Health provided a grant in 2015/2016 in Staffordshire this amounted to £377,000 this allowed Staffordshire to commission assessments through a social work agency and the backlog of outstanding assessment was kept to a minimum. This grant did not continue into 2016/2017.

National Picture

18. Nationally in 2015/2016 update **195,840** DoLS applications were received by Local Authorities this compares to the national data from 2013/2014 with **13,715** DoLS applications. The 2016/2017 data is due to be published 1st November 2017.

Prioritisation tool

19. ADASS issued a guidance note in November 2014 regarding DoLS and gave guidance on using a prioritisation process in order to identify the risk and complexity of DoLS applications. Staffordshire use a prioritisation tool which classifies applications into three strands high, medium and low priority. This is completed by examining the application data and matching this information to the prioritisation tool. This is completed by SCC officers including the Adult Safeguarding Manager and Best Interests Assessors.

Current Situation in Staffordshire

20. A report was presented to SLT on the 25th April 2016 and pre cabinet on the 4th May 2016 with an options appraisal the decision taken by SLT and pre cabinet was to focus resource on those individuals who meet the criteria to be considered high priority applications all other applications are unlikely to be assessed.

Current Data April 2017 – September 2017 (6 Months)

Applications	1325
High priority	542 (41%)
Medium priority	210 (16%)
Low priority	569 (43%)
Assessments completed	561 compared to 268 same period 2016/2017
Backlog high priority (unallocated)	Currently 20* compared to 193 same period last year

21. The backlog of high priority applications is a running total and varies on a daily basis depending on the number of daily applications made. The figure quoted was on the 30th September 2017.
22. Appendix A and B for charts indicating the demand and current backlog.

Mental Health Assessors

23. Since 2009 Health bodies have funded the Mental Health Assessors (MHA) who complete part of the DoLS assessment process this was initially through PCT's then NHS England and latterly the CCG's. The CCG's are indicating that they do not intend to continue to fund these assessments. SCC are currently awaiting a formal response from the CCG's. The cost of these assessments is currently not clear but is in the region of £150-200K per annum.

Online electronic referral

24. It is anticipated that SCC will launch an online referral form for DoLS over the coming months with the aim to improve administration by ensuring forms are correctly completed first time and enabling the triage process to make decisions about prioritisation based on enhanced information.

Agreed Plan

25. **Recruitment of substantive Best Interests Assessor (BIA) roles** – Completed three full time posts.

26. **Increase performance of BIA rota from current 20 assessments a month from April 2017 in partnership with SSOTP, both Mental Health Trusts and Independent Futures BIA rota.**
27. The partnership agreement with SSOTP is for 200 BIA assessments over a 12 month period.
28. Current performance BIA rota Data until end September 2017
 - a. SSOTP – 82
 - b. SCC – 17
 - c. SSSFT – 12
 - d. ALDT (IF) – 10
 - e. NSCHT (North Staffs) – 3
29. Total 124 completed assessments an average of 20 assessments per month. This was lower than expected due to worse than expected performance from SSOTP and ALDT

Increase the numbers and capacity of independent BIA contractors

30. Currently we have 8 Independents with another 6 who have expressed an interest. The rules around IR35* have caused some challenges however we have now established that currently SCC is compliant with IR35 rules. This is sufficient for current high priority demand. IR35 is the short name used for the 'intermediaries legislation', which is a set of tax rules that apply to contractors if you work for a client through an intermediary – which can be a limited company or “personal service company” which is how many contractors operate. The Intermediaries Legislation was introduced in 2000 to tackle so-called 'disguised employment', where individuals use their own limited companies to carry out professional services, but operate in a manner more akin to a traditional 'employee'. Changes to the guidance were issued in March 2017. These changes were introduced to 'improve fairness in the tax system by ensuring that individuals are not able to sidestep employment taxes or NICs'.

S21A appeals

31. Anyone deprived of their liberty has a statutory right to appeal against the deprivation of Liberty. Staffordshire currently has 14 ongoing and expected cases. SCC work in partnership with partner agencies including the CCG's to ensure the most efficient use of public financial resources to respond to these appeals. An appeal can be issued by the person themselves but usually (if not always) is issued by the representative of the person. The appeal is heard by a judge in the Court of Protection and the person receives legal aid to enable the appeal to the DoLS. Staffordshire work with partners to ensure an efficient response avoiding duplication and cost. Often the Court requires the funding body to reconsider the accommodation options available to the person before making a final judgement as to the appeal.

Deprivation of Liberty (outside of care home/hospital)

32. DoLS applies to care home and hospitals only. To authorise a Deprivation of Liberty in other accommodation settings an application is required to the Court of Protection Staffordshire legal services continue to make applications to the court. This work is completed by the Adult Learning Disability Service, SSOTP and the Mental Health Trusts. This work has been included within the Section 75 agreement for SSOTP but otherwise is not resourced or identified with current partnership agreements. Resources outside of the SSOTP S75 partnership agreement would need to be identified within existing budgets.

Future changes to the law

33. The Law Commission published a report and draft bill in March 2017 which has put forward proposals to change the legal framework for Deprivation of Liberty. The Department of Health have not issued a formal response but are currently consulting on the new proposed legislation. The timescale for any new legislation is currently unknown. There is a planned meeting with DoH 2nd November 2017 (Appendix 3). The Law Commission proposal is intended to streamline the process for assessing whether a deprivation of liberty is necessary. It is planned that the new scheme would also ensure those deprived of their liberty in settings outside of care homes and hospitals are covered by the new scheme.

Link to Strategic Plan

34. The Deprivation of Liberty Safeguards supports the County Councils vision for a connected Staffordshire by ensuring that appropriate prevention and assessment mechanisms are in place to support people's health, wellbeing and independence.

Contact Officer

Name and Job Title: Peter Hampton, Adult Safeguarding Manager

Telephone No.: 01785 895676

Address/e-mail: peter.hampton@staffordshire.gov.uk

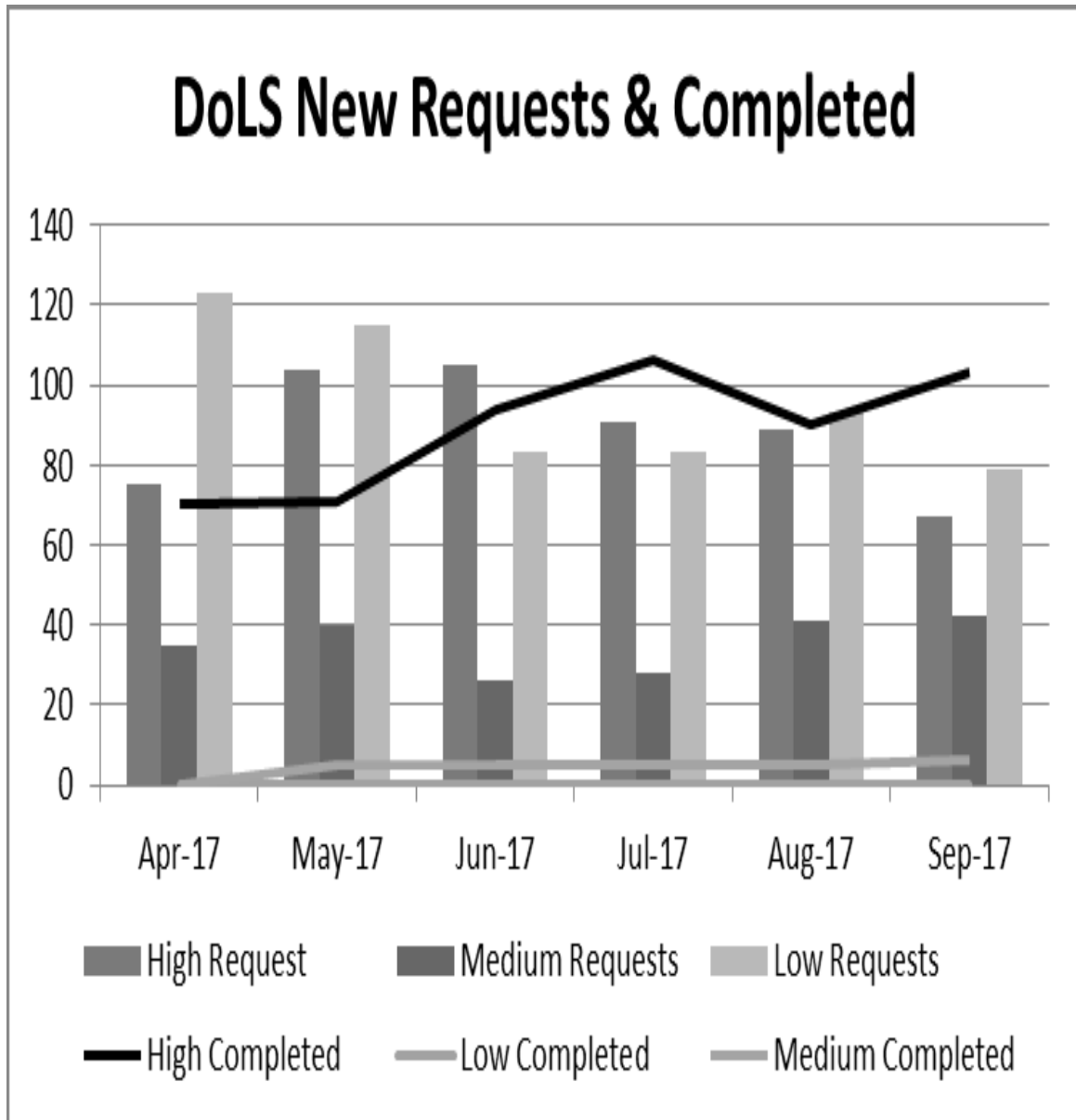
Appendices/Background papers

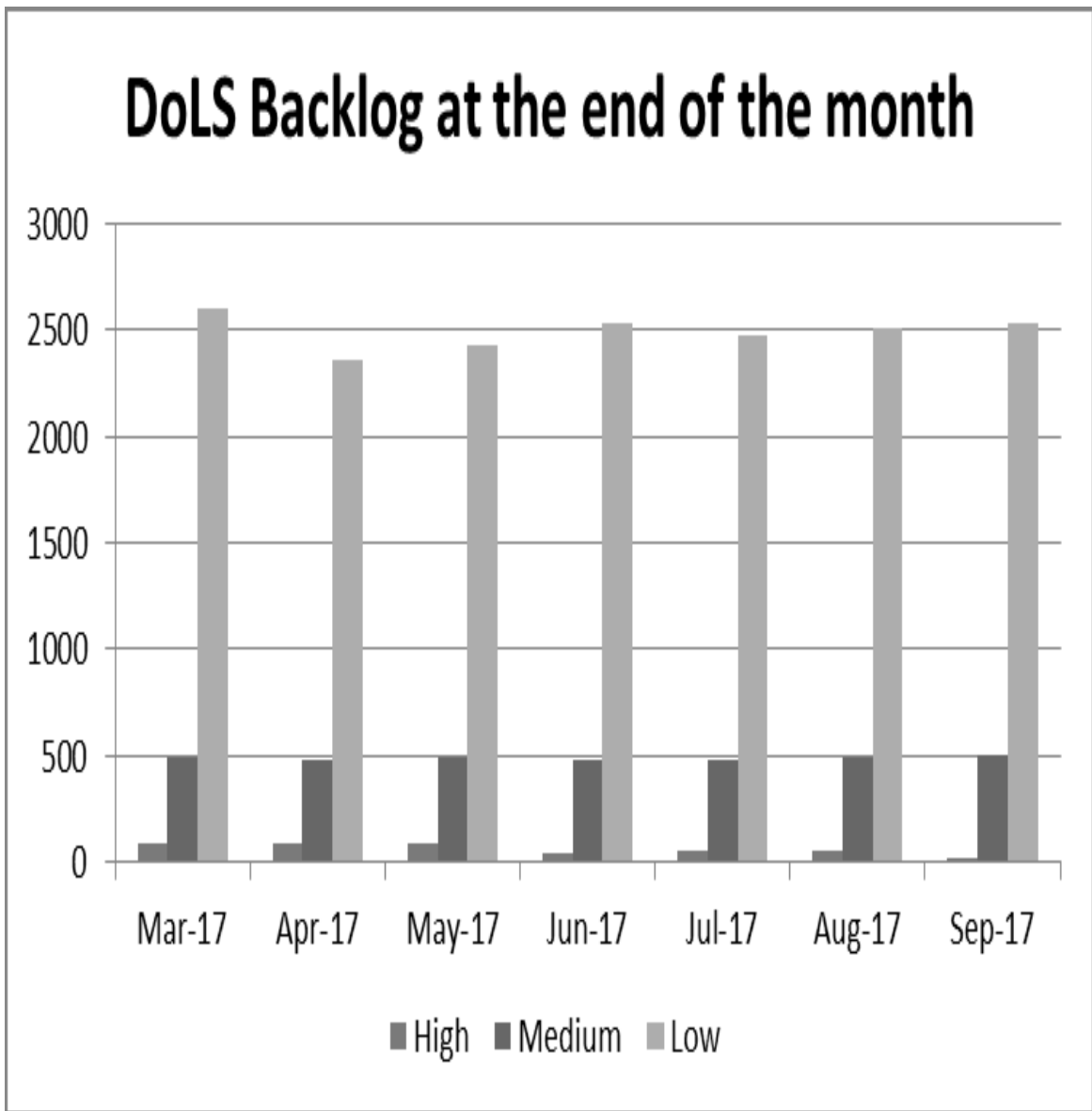
Appendix A - Government Briefing paper on Deprivation of Liberty issued October 2017

Appendix B - DoLS Requests

Appendix C - DoLS Backlog

Appendix 1 – please note Low completed is 0.







BRIEFING PAPER

Number 8095, 2 October 2017

Deprivation of Liberty Safeguards

By Elizabeth Parkin

Contents:

1. Deprivation of Liberty Safeguards
2. Recent and proposed changes



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Summary

Deprivation of Liberty Safeguards (DoLS) were introduced into the *Mental Capacity Act 2005* by the *Mental Health Act 2007*.

DoLS provide a framework for approving the deprivation of liberty for people who lack the mental capacity to consent to necessary treatment in a hospital or care home. The Supreme Court determined that deprivation of liberty occurs when:

The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements. [*P \(by his litigation friend the Official Solicitor\) v Cheshire West and Chester Council & Anor* \[2014\] UKSC 19](#).

DoLS ensure that people are only deprived of their liberty in a safe and correct way, and that this is only done when it is in their best interests and there is no other way to provide necessary care and treatment.

The safeguards provide a statutory framework for authorising a deprivation of liberty, including six separate assessments by designated professionals, and subsequent rights of review.

There have been recent changes affecting DoLS. A Supreme Court judgment in 2014 significantly widened the definition of deprivation of liberty, meaning more people were subsequently considered to have their liberty deprived. There was a ten-fold increase in the number of deprivation of liberty applications following the judgment.

In March 2017, the Law Commission published a report and Draft Bill recommending an overhaul of the DoLS process. The Law Commission recommends that DoLS are repealed as a matter of urgency, and are replaced by a new scheme called the Liberty Protection Safeguards. The new safeguards would streamline the process for assessing whether a deprivation of liberty is necessary, and obtaining the required authorisation. The Government is due to publish its response to the recommendations.

1. Deprivation of Liberty Safeguards

Deprivation of Liberty Safeguards were introduced in 2009, and form part of the *Mental Capacity Act 2005*. The Act provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves.

DoLS provide a framework for approving the deprivation of liberty for someone who lacks the mental capacity to consent to necessary treatment in a hospital or care home. If a person's liberty needs to be deprived in other settings, an authorisation must be obtained from the Court of Protection.

The safeguards are intended to ensure that someone is only deprived of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them.

DoLS legislation sets out when and how deprivation of liberty may be authorised, and provides a statutory assessment process with designated professionals and responsible bodies. It also details arrangements for renewing and challenging a deprivation of liberty.

1.1 The authorisation process

The safeguards provide the following process for authorising a deprivation of liberty:

- The hospital or care home identify those at risk of deprivation of liberty, and request authorisation from the supervisory body (the NHS Trust, local authority or local health board).
- The supervisory body must arrange a series of six assessments. Assessments must be completed within 21 days. An Independent Mental Capacity Advocate (IMCA) is instructed for anyone without representation.
- If all assessments support authorisation, a best interests assessor will recommend the period for which deprivation of liberty should be authorised, up to a maximum of a year.
- The best interests assessor also recommends a person to be appointed as the relevant patient's representative.
- Authorisation for deprivation of liberty is given, if appropriate, and the person's representative is appointed.
- The authorisation is implemented by the managing authority (the person or body with management responsibility for the hospital or care home).
- The person and their relevant person's representative can request a review of the deprivation of liberty at any time. The managing authority also has a duty to monitor the case to see if the person's circumstances change and if they no longer need to be deprived of their liberty.

- The person and their representative also have a right to apply to the Court of Protection, which has powers to terminate authorisation or vary the conditions of the deprivation of liberty.

In urgent situations, a hospital or care home can give an urgent authorisation for seven days while obtaining a standard authorisation. This may be renewed for a further seven days.

The safeguards cannot apply to people while they are detained in hospital under the *Mental Health Act 1983*.

1.2 Deprivation of liberty assessments

There are six assessments that must be undertaken as part of the standard deprivation of liberty authorisation process. An authorisation for a deprivation of liberty cannot be granted unless all of these qualifying requirements are met:

- **age** - to confirm whether the relevant person is aged 18 or over.
- **no refusals** - to establish whether an authorisation to deprive the relevant person of their liberty would conflict with other existing authority for decision-making for that person. This may include advance decisions to refuse treatments, or valid decisions of a donee or a deputy.
- **mental capacity** - to establish whether the relevant person lacks capacity to decide whether or not they should be accommodated in the relevant hospital or care home to be given care or treatment.
- **mental health** - to establish whether the relevant person has a mental disorder within the meaning of the *Mental Health Act 1983*. That means any disorder or disability of mind, apart from dependence on alcohol or drugs. It includes all learning disabilities.
- **eligibility** - to determine whether the relevant person meets the requirements for detention under the *Mental Health Act 1983*; this would make them ineligible for a standard authorisation.
- **best interests** - to establish whether a deprivation of liberty is occurring and whether this is:
 - in the best interests of the relevant person
 - necessary to prevent harm to themselves
 - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

Further information on each of these assessments is available in the [Mental Capacity Act, Code of Practice: Deprivation of Liberty Safeguards](#), chapter four.

1.3 Involvement of family and friends

The Library is often asked how family and friends can contribute to a deprivation of liberty assessment. This may occur in a number of ways:

Best interests assessment

6 Deprivation of Liberty Safeguards

The *Mental Capacity Act* states that the views of the individual and those of people who are responsible for caring for the patient or interested in his welfare should be taken into account when deciding what is in their best interest:

(6) He [the best interests assessor] must consider, so far as is reasonably ascertainable—

(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of—

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(b) anyone engaged in caring for the person or interested in his welfare,

(c) any donee of a lasting power of attorney granted by the person, and

(d) any deputy appointed for the person by the court,

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6)¹

The *Code of Practice* states that it is the responsibility of the best interests assessor to enable family and friends to express their views, using support to meet communication or language needs as necessary.²

Relevant person's representative

Once a deprivation of liberty authorisation has been given, supervisory bodies must appoint the relevant person's representative. Often this is a family member, friend or carer. A paid representative may also be appointed.

The role of the relevant person's representative is:

- to maintain contact with the relevant person, and
- to represent and support the relevant person in all matters relating to the deprivation of liberty safeguards, including, if appropriate, triggering a review, using an organisation's complaints procedure on the person's behalf or making an application to the Court of Protection.

Further information on the relevant person's representative is available in chapter 7 of the [Mental Capacity Act, Code of Practice: Deprivation of Liberty Safeguards](#).

¹ [Mental Capacity Act 2005](#), Section 4, Clauses 6-7

² [Mental Capacity Act, Code of Practice: Deprivation of Liberty Safeguards](#), page 54

Lasting power of attorney

Lasting power of attorney enables the donor to appoint one or more attorneys to make decisions on their behalf at a time when they no longer have the mental capacity to make those decisions themselves. Family members are often appointed as lasting power of attorney.

Library Briefing Paper 3898 [Powers of attorney and other decision-making powers](#) (April 2017) gives further detail.

2. Recent and proposed changes

2.1 Definition of deprivation of liberty

A Supreme Court judgment in May 2014, known as “Cheshire West”³, widened the definition of a deprivation of liberty. The Court held that the key feature is whether the person concerned is under continuous supervision and control and is not free to leave.

The judgment significantly increased the number of people who are considered to have their liberty deprived and require safeguards, leading to a tenfold increase in applications between 2013-14 and 2014-15⁴.

The Law Commission found that the increase in DoLS applications has led to substantial processing delays:

The implications for the public sector have been significant.

[...]

Many responses [to the Consultation] (particularly from NHS bodies and local authorities) pointed to the practical and financial impact of Cheshire West, such as the increasing backlog of cases, referrals for authorisation being left unassessed, the legal timescales for authorisations being frequently breached and shortages of people qualified to perform roles under the DoLS provisions.⁵

2.2 Law Commission review

In 2014, the House of Lords Select Committee on the *Mental Capacity Act 2005* described DoLS as not fit for purpose, poorly drafted and overly complex.⁶ As a result, the Government asked the Law Commission to review the *Mental Capacity Act* and DoLS.

The Law Commission’s final report and draft Bill were published in March 2017:

- Law Commission, [Mental Capacity and Deprivation of Liberty](#), March 2017
- [Mental Capacity \(Amendment\) Bill](#) (Annex A)

³ [P \(by his litigation friend the Official Solicitor\) v Cheshire West and Chester Council & Anor \[2014\] UKSC 19](#).

⁴ NHS Digital, [Mental Capacity Act \(2005\) Deprivation of Liberty Safeguards \(England\) England 2015-16 National Statistics](#), 28 September 2015

⁵ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/Mental_Capacity_Report_Summary.pdf

⁶ House of Lords, [Select Committee on the Mental Capacity Act 2005: post-legislative scrutiny](#), 25 February 2014,

The Government is due to publish its response to the recommendations.

The Law Commission recommends that DoLS are repealed as a matter of urgency, and are replaced by a new scheme called the Liberty Protection Safeguards. The intention is to streamline the process for assessing whether a deprivation of liberty is necessary, and obtaining the required authorisation. The Liberty Protection Safeguards would also authorise particular arrangements and conditions for a person's care or treatment, rather than simply authorising a deprivation of liberty.

The DoLS requirement for six assessments, which the Law Commission described as "a paperwork-heavy process...much of the assessment process goes over the same ground as has already been gone over by health and social care professionals in deciding to make the placement in the first place", would be removed.

Under the proposed scheme, when there is a potential deprivation of liberty, the responsible body – the NHS body or local authority - arranges three assessments: a capacity assessment, a medical assessment, and a 'necessary and proportionate' assessment. They must also consult with friends and family of the relevant person. Each case is verified by an "independent reviewer", and those where the placement are contrary to the person's wishes are referred to an Approved Mental Capacity Profession (AMCP). The scheme also provides for statutory review of the deprivation of liberty, as well as the provision of an advocate or appropriate person to represent and support them both during the initial authorisation process and during the period of the placement.

The new scheme would extend beyond hospitals and care homes, removing the need for deprivations of liberty to be authorised by the Court of Protection in other settings such as sheltered accommodation. It also extends the process to 16 and 17 year olds, whereas DoLS only apply to those aged 18 and over.

The draft *Mental Capacity (Amendment) Bill* would implement the Law Commission's recommendations by amending the *Mental Capacity Act 2005* and would apply to England and Wales.

2.3 Coroners' duty to investigate death of someone subject to DoLS

From 3 April 2017, a coroner no longer automatically investigates the death of someone subject to DoLS under the *Mental Capacity Act*. The change was provided for by the *Policing and Crime Act 2017*.

The Chief Coroner has issued new guidance which outlines that the death of any person subject to a deprivation of liberty would no longer be considered to have occurred 'in state detention'. The coroner would still investigate some deaths in the usual way:

51. When that person dies the death should be treated as with any other death outside the context of state detention [footnote to text: Obvious exceptions to this include where a person subject to a DoL is also in police custody. Other complicating factors may arise in individual cases and coroners should – as always - be alive

to the specifics of the reported death]: it need only be reported to the coroner where one or more of the other requisite conditions are met.

52. Of course, where there is a concern about the death, such as a concern about care or treatment before death, or where the medical cause of death is uncertain, the coroner will investigate thoroughly in the usual way. There will always be a public interest in the careful scrutiny of any death in circumstances akin to state detention. As in all cases there must be sufficiency of coroner inquiry.

53. Senior coroners should maintain close liaison with the DoLS lead in their local authority, working together to deal with this extra activity.⁷

The Library briefing, [Policing and Crime Bill – Lords Amendments](#) (January 2017), provides further information.

⁷ Chief Coroner, Guidance No 16A, [DEPRIVATION OF LIBERTY SAFEGUARDS \(DoLS\) – 3rd April 2017](#), onwards.

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WORK PROGRAMME

Safe and Strong Communities Select Committee 2017/18

This document sets out the work programme for the Safe and Strong Communities Select Committee for 2017/18. The Safe and Strong Communities Select Committee is responsible for scrutinising: children and adults' safeguarding; community safety and Localism. The Council has three priority outcomes. This Committee is aligned to the outcome: The people of Staffordshire will feel safer, happier and more supported in and by their community.

We review our work programme at every meeting. Sometimes we change it - if something comes up during the year that we think we should investigate as a priority. Our work results in recommendations for the County Council and other organisations about how what they do can be improved, for the benefit of the people and communities of Staffordshire.

Councillor John Francis

Chairman of the Safe and Strong Communities Select Committee

If you would like to know more about our work programme, please get in touch with Tina Gould, Scrutiny and Support Manager on 01785 276148 or by emailing tina.gould@staffordshire.gov.uk

Membership – County Councillors 2017-18

John Francis (Chairman)
Conor Wileman (Vice Chairman)
Syed Hussain
Trevor Johnson
Jason Jones
Natasha Pullen
Kyle Robinson
Paul Snape
Victoria Wilson
Mike Worthington

Calendar of Committee Meetings 2017-2018

13 June 2017 at 2.00 p.m.
13 July 2017 at 10.00 a.m.
26 September 2017 at 2.00 p.m.
9 November 2017 at 10.00 a.m.
11 December 2017 at 2.00 p.m.
15 January 2018 at 10.00 a.m.
5 March 2018 at 10.00 a.m.

Meetings usually take place in the Oak Room in County Buildings.

Work Programme 2017-18

Date of meeting	Item	Link to Council's Commissioning Plans	Details	Action/Outcome
Tues 13 June 2017	Introduction to S&SC SC	Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Committee received a presentation which gave an overview of the remit of the Select Committee and highlighted some of the key issues going forward.	As a result of the presentation and subsequent discussion on developing the work programme Members requested the following items be included on their work programme: <ul style="list-style-type: none"> • The West Midlands Peer Review of Adult Safeguarding • How to engage with hard to reach communities • Modern day slavery and domestic violence • CSE
Thurs 13 July 2017	Children's & Families System Transformation Cabinet Member: Mark Sutton Officer: Mick Harrison/Helen Riley	Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Transformation programme for Children and Family Services has previously been considered by this Select Committee on 8 June, 8 July & 12 December 2016.	Due to meeting timings and restrictions during the recent elections it had not been possible on this occasion for the Select Committee to undertake pre-decision scrutiny, with this report being included on the 21 June 2017 Cabinet agenda. Comments and/or concerns raised were therefore reported to the 19 August Transformation Programme Board, with these then helping inform future working.
	Children, Young People & Families Pilots Cabinet Member: Mark Sutton Officer: Mick Harrison/Janene Cox	Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Pilots support the work of the Transformation Programme and were last considered by this Committee on 16 January 2017.	Progress on the Pilots varied and Members requested that in their next 6 monthly report they receive details of which pilots will cease and how the success of the others will inform best practise across the County.
	Public Analyst & Scientific Services Laboratory Cabinet Member: Gill Heath Officer: Trish Caldwell [exempt item]	Well Run Council Making the most of our Assets, Managing Change Well, Transforming Ourselves, Innovation in ICT, Continued Modernisation of HR, Outcome Based Performance Management	To inform the Select Committee of a review carried out into the operation of the in-house Public Analyst and Scientific Services laboratory.	The Select Committee did not endorse the recommendations but asked the Cabinet Member for Communities to take their concerns to the 19 July Cabinet and ask for a deferment on the decision to close the service pending consideration of their concerns/alternative suggestions.

Mon 26 Sept 2017	Child Sexual Exploitation (CSE) in Staffordshire, to include progress against the CSAF Action Plan and information regarding Revenge Porn & Sexting Cabinet Member: Mark Sutton Officer: Mick Harrison	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Committee has requested a six monthly update on this issue. The Chair of the Children and Young People's Overview and Scrutiny Committee at Stoke City Council has been invited to attend this meeting and this arrangement is reciprocated.	The Select Committee want to encourage schools to make use of the DVD "For the Whole World to See" in their PHSE lessons and for this resource to be used as part of school governor training. Future reports are also asked to include consideration of LGBT as a potential vulnerable group within this context. Members also requested that they receive an update in 6 months time on the OPCC funded post to develop PHSE resources around safeguarding in its broadest sense and the take-up of schools.
	Cabinet Response: Preventing Low Level Neglect of Children in Staffordshire Cabinet Member: Mark Sutton	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities	The Committee received an initial response to the recommendations contained within its Working Group report on Low Level Neglect on 6 March 2017. It was agreed to follow up outstanding actions in 6 months' time.	Members thanked the Cabinet Member for Children and Young People for his progress in implementing the recommendations made by the Working Group. They also asked for an organogram showing the governance model and relationship between groups involved.
Thurs 9 Nov 2017 Page 45	West Midlands Peer Review of Adult Safeguarding Cabinet Member: Alan White Officer: Andrew Sharp	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities	This review took place in February 2017. Councillors Francis and Olszewski participated in this review. At the June meeting Members requested feedback on the review to a future meeting.	
	Deprivation of Liberty Safeguards Cabinet Member: Alan White Officer: Peter Hampton	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities.	At its meeting on 9 November 2016 Members were told that the anticipated backlog of referrals should be cleared by June/July 2017. The Committee should monitor and review this matter.	
Mon 11 Dec 2017	Customer Feedback & Complaints, Adult Social Care Annual Report 16/17 Cabinet Member: Alan White Officer: Kate Bullivant	Well run Council	Adult's Services have a statutory obligation to submit an Annual Report on complaints and representations to the relevant County Council Committee.	
	Customer Feedback & Complaints, Children's Social Care Annual Report 16/17 Cabinet Member: Mark Sutton Officer: Kate Bullivant	Well run Council	Children's Services have a statutory obligation to submit an Annual Report on complaints and representations to the relevant County Council Committee.	

	<p>Home Care Cabinet Member: Alan White Officer: Richard Harling</p>	<p>Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.</p>	<p>Included on the work programme following the October Triangulation meeting. Consideration of Home Care from a safeguarding point of view.</p>	
	<p>Domestic Abuse Cabinet Member: Gill Heath Officer: Mick Harrison</p>	<p>Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.</p>	<p>Select Committee Members requested an item on this issue at their meeting of 13 June.</p>	
Mon 15 Jan 2018	<p>Modern Slavery Cabinet Member: Gill Heath Officer: Mick Harrison and Becky Murphy</p>	<p>Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.</p>	<p>At the 12 December meeting Members requested a further report giving progress on the Task and Finish action plan following their January meeting. Following this meeting there was no significant developments to report and this item has therefore been deferred for consideration in the new municipal year.</p>	
	<p>Staffordshire & Stoke-on-Trent Adult Safeguarding Partnership Board Cabinet Member: Alan White Independent Chair: John Wood</p>	<p>Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities</p>	<p>This report is presented to the Select Committee on an annual basis.</p>	
	<p>Staffs Safeguarding Children's Board (SSCB) Annual Report 2016/17 Cabinet Member: Mark Sutton Independent Chair: John Wood</p>	<p>Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities</p>	<p>This report is presented to the Select Committee on an annual basis.</p>	
	<p>Children's & Families System Transformation & update on Pilot Projects Cabinet Member: Mark Sutton Officer: Mick</p>	<p>Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.</p>	<p>The Transformation programme for Children and Family Services has previously been considered by this Select Committee on 8 June, 8 July & 12 December 2016 & 13 July 2017.</p>	

	Harrison/Helen Riley/ Janene Cox			
Mon 5 March 2018	Child Sexual Exploitation (CSE) in Staffordshire, to include progress against the CSAF Action Plan Cabinet Member: Mark Sutton Officer: Mick Harrison	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Committee has requested a six monthly update on this issue. The Chair of the Children and Young People's Overview and Scrutiny Committee at Stoke City Council has been invited to attend this meeting and this arrangement is reciprocated.	
	Youth Offending service Cabinet Member: Mark Sutton Officer: Vonni Gordon	Well run Council	Consideration of the YOS Review	

Briefing Notes/Updates/Visits 2017-18

Date	Item	Link to Council's Commissioning Plans	Details	Action/Outcome
17 July, 10 August and 15 September 2017	Visit to the MASH (Multi Agency Safeguarding Hub)	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities	Select Committee Members requested a visit to the MASH to see first hand the multi agency partnership working and the rationale for creating this facility.	The main visit took place on 10 August jointly with members of the Corporate Parenting Panel, with those unable to make 10 August visiting separately.
January 2018	Community Safety Agreement	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities.	Select Committee response to the SCC Stronger Communities Strategy Group Draft Agreement and results of the Strategy Group's 13 September meeting had been requested by the Select Committee and at the 11 October Triangulation meeting it was agreed that this information should be brought to the Select Committee via a briefing note rather than be included on an agenda.	

Working Group and/or Inquiry Days 2017-18

Date	Item	Link to Council's Commissioning Plans	Details	Action/Outcome
Monday 31 July 2017 9.30 – 11.00 am	Community Safety Agreement – shared priorities Cabinet Member: Gill Heath Officer: Mick Harrison	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities.	The SCC Stronger Communities Strategy Group (chaired by Gill Heath and including representation from District and Borough Councils) has produced a draft Community Safety Agreement Safe which sets out shared priorities. This will be agreed at their meeting of 13 September. The Select Committee will consider the Draft	Findings from the informal meeting were agreed by Members and forwarded to Becky Murphy, Safer Communities Commissioning Officer, to share at the 13 September Strategy Group meeting. Feedback from the Strategy Group

			Agreement at an informal review session, reporting their findings to both the Strategy Group on 13 September and the Select Committee on 26 September.	meeting will be shared with the Select Committee at their meeting of 26 September.
tbc	How to engage hard to reach communities Cabinet Member: Gill Heath Officer: Mick Harrison	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	Possible Review to identify hard to reach communities within Staffordshire and the most effective way of addressing the issues identified.	A desk top exercise is underway to establish if, and in what ways, the County Council is currently addressing this issue.
tbc	Children's Centres – 3 years on Cabinet Member: Mark Sutton Officer: Mick Harrison	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	Three years ago the Select Committee completed work to assess the role of the Children's Centre. Three years on the Select Committee will re-visit this work, visiting the Centres to assess the current situation in comparison with the findings of the original working group report.	At the Select Committee meeting of 26 November Members agreed to a request that this review be put back until the current significant changes within Children's Centres were completed.
Inquiry Day 30 January 2018	Preventing Children coming into Care- now called "Edge of Care" Cabinet Member: Mark Sutton Officer: Richard Hancock	Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	This item was initially proposed by the Commissioner for Community Safety, Children and Families. The Chairman has met with the Head of Families First and a scoping report has been prepared for Members' consideration.	
Monday 14 August	Local Business Case for Joint governance of Police and Fire & Rescue in Staffordshire PCC: Matthew Ellis	Resilient Communities Ensure effective safeguarding for the most vulnerable in our communities Enable people to access the appropriate intervention at the right time.	The Police and Crime Commissioner (PCC) has produced a business case proposing the joint governance of the Police and Fire and Rescue Services in Staffordshire. The consultation ends at the beginning of September. This informal session will be an opportunity for the Select Committee to consider the business case in detail and formally respond to the consultation.	The Select Committee's informal workshop session was held jointly with the Corporate Review Committee and the Police and Crime Panel. The findings from this scrutiny will be formally reported to a special meeting of the County Council on 31 August where they will agree the County Council's formal response to the PCC's consultation.

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Current & Related Work of Select Committees and/or All Party Member Groups 2017-18

Timescale	Area of Work	Link to Council's Commissioning Plans	Details	Action/Outcome

Referrals from other Select Committees 2017-18

Timescale	Area of Work	Link to Council's	Details	Action/Outcome

		Commissioning Plans		
tbc	Elective Home Education	Best Start	Referral from Corporate Parenting Panel – August 2017 (NB – also referred to Prosperous Staffordshire Select Committee)	

