

Meeting:	Council
Meeting date:	Friday 18 January 2019
Title of report:	Court Judgements Relating to Children and Families
Report by:	Chief executive

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To receive a report on the actions taken and planned, to deliver the required and associated or related identified improvements, having regard to the issues identified in the two court judgments of His Honour Mr Justice Keehan related to fostering and adoption within the county.

Herefordshire Council was heavily criticised by Mr Justice Keehan in two court judgments in December 2018 that highlighted past failures and recent poor practice. On 18 December the Chairman of the Council received a request from Councillors Bartlett, Bowes, Butler, Chappell, Crockett, Edwards, Hardwick, James and Summers to convene an extraordinary meeting of Council due to the public interest in these matters.

This report provides information about the issues raised in the judgments and how those issues are being addressed.

Recommendation(s)

That:

- (a) the report be received.**

Alternative options

1. There are no alternatives to the recommendation. It is open to Council to refer any matter to the appropriate body or individual to consider.

Key considerations

2. Herefordshire Council has been heavily criticised by Mr Justice Keehan in two court judgments in December 2018 that highlighted past failures and also recent poor practice. The council accepts that failures have occurred and has taken steps to improve practice as well as undertaking further investigations into the matters once the judgments had been finalised and published.
3. Both judgments were delivered in private. The judge gave leave for versions of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. The judgments are attached in Appendices 1 and 2.
4. Group leaders and the chair and vice chair of children and young people scrutiny committee have been kept informed of the two cases through a briefing in October 2018 as part of the regular performance challenge sessions which look at different aspects of the performance of services for children, young people and families. A dedicated briefing session took place on 14 November, also in attendance were the chief executive, the deputy solicitor to the council for children and families, and the solicitor to the council. A further briefing was provided on 29 November 2018 as part of the performance challenge session. These were all prior to the judgments being published on 7 December 2018. Following the publication, bespoke briefing sessions were held, open to all councillors, on 20 December 2018 and 10 January 2019. The presentation used at these briefing sessions is attached in Appendix 3 and was the same for both.
5. On 18 December 2018 the Chairman of the Council received a request from Councillors Bartlett, Bowes, Butler, Chappell, Crockett, Edwards, Hardwick, James and Summers to convene an extraordinary meeting of Council to consider the serious issues highlighted in the judgements.
6. There are c.38,000 children and young people under 19 years old in Herefordshire and, of those, 4,500 are designated as having special educational needs. By the end of December 2018 there were 917 early help assessments, the vast majority of which are led by a key worker working in a school, or health service or in the third sector. 228 children at the end of the year were supported through a child in need plan and open to children's social care. This gives an illustration of the different vulnerabilities that some of our children, young people and families experience. At the end of 2018 the council was working with 117 children supported through child protection plans, 326 children who are looked after and c.180 care leavers. From 1 January 2014 to 30 November 2018 there have been 94 adoption orders granted for Herefordshire children.
7. Both Cabinet and children and young people scrutiny committee receive annual reports on Herefordshire's Adoption and Fostering Services that provide an opportunity to understand both areas. The reports illustrate that significant numbers of children and young people benefit from both services. During 2017/18 it was determined that adoption was the appropriate plan for 29 children, 22 Placement Orders were granted, and two

birth mothers gave consent to their child being placed for adoption. 22% of Herefordshire looked after children (LAC) children were adopted from care over 2014-17 compared with the England average of 15%.

8. In relation to fostering, national figures show most councils struggling to recruit sufficient foster carers. Herefordshire Fostering Service has continued to expand albeit at a slower rate of growth over the last year: (2015/16) performance of 15% growth, (131 households) 2016/17 overall growth was 10% (144 households) and 155 households for 2017/18 shows continued growth of 7.6%.

9. As part of Ofsted's inspection of local authority children's services in June 2018 the report noted that

"Foster carers go through an appropriate approval process and receive the right range of training to meet the needs of children placed with them. The local authority is struggling to provide a sufficient number of foster families, and in particular those that meet the needs of sibling groups and teenagers."

10. This is a national and local issue and we are currently refreshing our approach to foster care recruitment to try to address this issue. We do have some children that move placements. It has been increasingly difficult to find suitable placements, both foster care and residential care in a national context where more children are being looked after and the demand for such placements has increased significantly. This has affected children's lives and also meant that Herefordshire has had to spend more for placements when they are found. Finding them is sometimes very difficult with little or no choice for the service and the child.

11. Ofsted also noted that improvements needed to be made in terms of agreement and recording of delegating responsibility to foster carers. Inspectors recorded that

"Children seen are in appropriate placements, and are having their needs met, with the majority developing well and their outcomes improving. The process for supporting stability of placements is effective and help is available early to prevent concerns from escalating further. Access to Herefordshire intensive placement support service therapeutic support is a strength. Case records do not demonstrate that matching takes place at the point of children coming into care, and for some children permanence is not achieved within their timescales."

"For the majority of children for whom the permanence decision is adoption, adoption is achieved in a timely manner. Family finding and matching are strong areas of practice. Families are carefully matched to children, and information sharing is good. Introductions are well managed, with input from the adoption social worker as well as the child's social worker."

"Arrangements for adoptive families to access post-adoption support are good, enabling help and support to be available without delay. The service keeps in touch with adopters, sending out emails and flyers to invite them to tailored training and social events. All adopters have access to a play therapist based in the service "

12. The council works with children and young people and their families in very complex and often challenging situations and can be involved in their lives over a long period of time. Herefordshire Council's aim, along with partners is to keep children safe and enable successful family lives wherever possible, whilst also making alternative family based arrangements if that is necessary.

13. Many children thrive in Herefordshire. A range of education indicators have improved over the past four years so that many indicators are in the top twenty five percent nationally, including achieving a good level of development, a range of Key Stages 1 and 2 results and seeing a range of improvements for vulnerable groups at key points. In autumn 2018 Ofsted noted that for primary education Herefordshire was “strong and improving” and had the largest improvement in national rankings for Key Stage 2. Herefordshire received a positive Ofsted and CQC inspection of special educational needs in 2016.
14. Herefordshire continues to experience relatively high numbers of children and young people who are looked after compared to statistical neighbours. However, there is a national picture of significantly increasing demand for children’s services and it was reported by the County Council’s Network that in the last year councils spent £800m more than they budgeted for on children’s services.
15. In June 2018 Ofsted carried out an inspection of local authority children’s services (ILACs) and was judged as requiring improvement overall for its safeguarding children services, the first time Herefordshire has maintained an overall judgement in this area since the creation of the council. As part of the judgement the council was deemed inadequate for leadership and management in creating the conditions for good social work to flourish. Recruitment and capacity, recording, performance management, quality assurance and quality of practice were some of the areas that were highlighted for improvement. Herefordshire has put in place an Ofsted Improvement Plan, shared with the Herefordshire Safeguarding Children’s Board and children and young people scrutiny committee. This been submitted to Ofsted and is attached in appendix 4.
16. The issues highlighted by Mr Justice Keehan included for the case concerning adoption are summarised as:
 - A lack of adherence to court approved care plan to pursue foster placement together for three month period
 - A lack of completed and signed social work “together /apart” assessment to inform decision making to separate twins
 - The inappropriate paraphrasing of psychologist report in social work assessment, altering original psychologist opinion on separation
 - A lack of independent review officer challenge to decision to separate twins and ensure adherence to court approved care plan.
 - Poor, delayed case recording, in some instances up to two years out of date
 - A lack of management action to address delay in case recording
 - The apparent deletion of vital information pertaining to children, so not disclosed to prospective adopters in the child permanency report
 - A delay in providing all relevant paperwork to the court.

It is important to note the recognition given by Mr Justice Keehan to the very high quality of care the two children received from their respective prospective adoptive parents.

17. The issues identified by Mr Justice Keehan in the case relating to the revocation of longstanding placement order summarised as:

- A lack of follow through on adoption plan
 - The failure to revoke placement orders as required
 - Poor standard of case recording and chronology, making case history difficult to follow
 - A lack of clarity in decision making, particularly decision not to place sisters together
 - The high number of moves of placement for each sister, detrimental to good outcomes
 - The high turnover of social workers, managers and Independent Review Officers involved with the sisters
 - The particularly poor standard of care leaver accommodation for sister 1 in October 2018.
18. Since a change in senior management earlier in 2018, stronger supervision and decision making arrangements have been put in place across children and family services. Mr Justice Keehan has recognised this in his findings.
19. The following action has also been taken:
- a) The Assistant Director Safeguarding and Family Support and the Director for Children and Families have offered to meet the young people and the adopters in 2019 to offer apologies in person and also to find out what more we can do to improve our services from their perspectives.
 - b) The Assistant Director Safeguarding and Family Support now chairs Placement Panel every Tuesday that reviews individual child cases and also looks at cohorts of children, for example those placed with parents or in kinship care. This includes children who are the subject of placement orders who will be reviewed on a six-monthly basis.
 - c) The agenda for Adoption Reviews has been amended to reflect that the review takes place in the light of the guidance set out in section 1 of the Adoption and Children Act 2002 to establish if the court approved care plan has been changed.
 - d) The legal department holds six-monthly legal review meetings of all children under placement orders. This should ensure that decisions are not made without Adoption Decision Maker (ADM) consideration.
 - e) A sibling separation tool is being introduced for managers to ensure the decision to recommend to separate considers all relevant matters before it is presented to the ADM and is clearly recorded on the Mosaic system. The completed sibling separation tool will be required at panel.
 - f) The current expected practice is not to remove any information from MOSAIC but to update information in a new font. This means that changes are recorded as changes rather than deleting previous information.
 - g) The judgments raised particular concerns about the effectiveness of the council's independent review officers (IRO) service. The primary task of the IRO is to ensure that the care plan for the child fully reflects the child's current needs and that the actions set out in the plan are consistent with the local authority's legal responsibilities towards the child. Their duty is to challenge poor corporate parenting.

- h) We have already taken steps to strengthen the IRO service by increasing management oversight and implementing robust processes to ensure any concerns are raised. We have also arranged for an externally led review of the service as part of our work with Doncaster Council, taking place in January 2019.
 - i) All IROs have been provided, by email and in a laminated hard copy, with legal guidance for IROs on challenging decisions of the Local Authority. The guidance stresses that the individual IRO is personally responsible for activating the dispute resolution process. There is now a clear expectation on IROs to record their work, including any dispute resolution concerns and activity. A more effective escalation process is in place.
 - j) A learning exercise on the cases is underway, some sessions have taken place before Christmas with all involved. The wider learning will be taken to all staff. We will adopt this approach for any cases in the future that we need to get a clear understanding on the presenting issues, what may have happened in the past and what may need to change in terms of current practice.
20. We know there is a tremendous amount of really good work carried out that keeps children and young people safe and changes their lives for the better, and that we have many committed and motivated staff. We also know that there is more to do to improve our practice to ensure that all children and young people in our care are well-supported and this includes recruitment, keeping caseloads at manageable levels, improving performance management and quality assurance.
21. The children and families directorate has a very open approach to external challenge and support to aid improvement. A number of external reviews have been arranged by the current director and by the chief executive. These included in 2017 and 2018 a local government association (LGA) peer review of cases; a full safeguarding peer review, and a peer challenge on culture. Feedback from these reviews was shared with members, partners and the safeguarding board and have been used to make improvements.
22. The director and assistant director have quarterly monitoring meetings with the West Midlands Senior HMI from Ofsted as well as an annual conversation with the West Midlands Regional Director that covers the performance of Herefordshire. In addition the Ofsted inspection framework means that for Herefordshire Ofsted will formally review and inspect services every year. Once every three years there will be an inspection of local authority children's services (this took place in June 2018) and there will also be a focused visit and/or a joint targeted area inspection in the other two years.
23. The director, assistant director and deputy solicitor to the council, children and families also now meet regularly through the year with Judge Plunkett, designated family judge Herefordshire and Worcestershire, to improve how the council can work with the court.
24. Cabinet has recognised the need to support the children's and legal services with additional investment of £1.6m in 2018. This additional investment has led to an increase in early help support, business support and family support to reduce the need for social worker involvement, and also providing additional agency social workers to fill permanent posts during a very difficult period of recruitment nationally and locally. This has provided the necessary capacity to begin to reduce caseloads, begin to provide more effective management oversight and support and proactively address some of the issues highlighted in the Ofsted inspection of local authority children's services in 2018. The challenge of permanent recruitment is a continuing issue for Herefordshire, as are the increases in demand for services and improving practice within this context.

Community impact

25. Collectively, elected members, council employees and partner agencies stand as corporate parents responsible for providing the best possible care and safeguarding for children and young people who are looked after by the council. Being a good corporate parent means we should accept responsibility for children in the council's care; make their needs a priority; and seek for them the same outcomes any good parent would want for their children.
26. The council's corporate plan has as one of its key priorities to keep children and young people safe and give them a great start in life. In the majority of the council's work this is achieved, however in the cases that were considered by Mr Justice Keehan there were clear failures over a number of years. The actions to improve the service approach will ensure that practice and decision making is improved and that children and young people, including those who are looked after and who are care leavers benefit.
27. In accordance with the adopted code of corporate governance, Herefordshire Council must ensure that those making decisions and delivering services are accountable for them. To support effective accountability the council is committed to transparently reporting on actions completed and outcomes achieved, and to promoting a positive working culture that accepts, and encourages constructive challenge.

Equality duty

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
28. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

Resource implications

29. There are no resource implications arising from the recommendation.
30. Resource implications for improvements in children and families directorate safeguarding and family support services including to support retention and permanent recruitment, provide a more targeted early help and edge of care offer, and to improve quality assurance and performance management are being considered as part of the budget

setting process for 2019/2020. In June 2018 Cabinet approved the creation of a legal services demand reserve of £200k and resource implications for further improvements in relation to legal services supporting children's social care are also being considered as part of the budget setting process for 2019/20.

31. The council's base revenue budget includes suitable budgets to cover the cost of officer time and external expert advisors to represent the council's interests in court cases. In addition, the council holds an ear marked litigation revenue reserve, the level of reserves are reviewed regularly.

Legal implications

32. The two court judgements summarise the significant failings of the council which resulted in serious breaches of human rights. The failings are described as "extensive and grave" and relate to the whole operation of Childrens Services in Herefordshire.
33. Section 22(3) Children Act 1989 provides the general duty of the council in relation to children looked after by them including the following:
 - a) To safeguard and promote his welfare and
 - b) To make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case
34. This duty underpins all activity by the council in relation to looked after children. This duty has become known as 'corporate parenting', which means the collective responsibility of the council, elected members, employees, and partner agencies, for providing the best possible care and safeguarding for the children who are looked after by the council.
35. The statutory responsibilities are set out in the Children Act 1989, including through amendments made by the Children (Leaving Care) Act 2000, the Children and Families Act 2014 and the Children and Social Work Act 2017.
36. The Children and Social Work Act 2017 made additional provisions for care leavers, extending support until the age of 25 and further clarified the role of corporate parents, including seven corporate parenting principles that councils must have regard to when looking after children in care as follows:
 - To act in the best interests, and promote the physical and mental health and wellbeing of those children and young people
 - To encourage those children and young people to express their views, wishes and feelings
 - Take into account the views, wishes and feelings of those children and young people
 - To help those young children and young people gain access to, and make the best use of, services provided by the council and its relevant partners
 - To promote high aspirations, and seek to secure the best outcomes, for those children and young people

- For those children and young people to be safe, and for stability in their home lives, relationships and education or work; and
- To prepare those children and young people for adulthood and independent living

37. Both judgements provided at appendices 1 and 2 were delivered in private. Mr Justice Keehan directed that the judgement should be published but took careful steps to redact certain information to preserve the confidentiality and privacy of the children, the adopters and their birth families. Any disclosure of such information may amount to contempt of court. All attending the meeting must be alert to this issue and members will receive advice at the meeting if necessary to prevent such difficulties occurring.

Risk management

38. There are no risks associated with the recommendation. The court judgements identified risks to effective operation of the fostering and adoption service, and the report identifies actions to mitigate those risks and secure improvement. Financial risks to the council arising from potential human rights claims were reflected in both the law and governance and children and families risk registers prior to the judgements and any continuing risks to the council, given the historic practice that has been identified, will be actively monitored and reported in corporate performance reporting arrangements.

Consultees

39. None.

Appendices

Appendices 1 and 2: Approved judgements by Mr Justice Keehan

Appendix 3: Member briefing presentation used on 20 December 2018 & 10 January 2019

Appendix 4: Herefordshire Ofsted Improvement Plan

Background papers

None identified