

MEETING:	HEALTH AND SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE
MEETING DATE:	1 AUGUST 2014
TITLE OF REPORT:	COUNCIL'S IMPLEMENTATION OF THE CHILDREN AND FAMILIES ACT 2014
REPORT BY:	ASSISTANT DIRECTOR: EDUCATION & COMMISSIONING

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

County-wide

Purpose

To consider the council's approach to implementing the Children and Families Act 2014, with particular regard to the aspects relating to adoption and special educational needs and disabilities.

To consider how partnership working might enhance the approach to benefit children and young people in Herefordshire.

Recommendation(s)

THAT:

- (a) **Health and Social Care Overview and Scrutiny Committee consider the council's approach to the implementation of the Children and Families Act 2014 and make recommendations for any further development.**

Alternative Options

- 1 No alternative options listed as this is a report to enable the committee to scrutinise the approach and make recommendations.

Reasons for Recommendations

- 2 So that the committee can provide challenge and assurance regarding the approach being taken and make recommendations for further improvements that will benefit children and young people and their families who are affected by the Children and Families Act 2014. Scrutiny also provides an assurance role for the Council regarding the implementation of the Act.

Key Considerations

- 3 The Children and Families Act received Royal Assent on 13 March 2014. This Act covers a number of areas and aims to give greater protection to vulnerable children, specifically in the areas of:
 - Children with Special Educational Needs and Disabilities
 - Adoption
 - The Care System
 - Education of Looked After Children
 - Carers
- 4 A new approach is being introduced for children with special educational needs and disabilities. Changes have been made to the adoption system with the intention of improving matching and speed of decision making. The Act also includes measures which mean that children in care may choose to stay with their foster carers until their 21st birthday.
- 5 The Act has been through a period of significant development as a Bill and significant guidance on some aspects of the Act, such as the Special Educational Needs (SEN) Code of Practice, is before parliament and due to be published in July 2014. It will come into force from September 2014. Some of the changes are fundamental and in relation to SEN, have been trailed as the most significant changes to the system for thirty years.
- 6 A number of aspects of the Act affect local authorities, indicated below:
 - 6.1 **Children with Special Educational Needs and Disabilities**
 - 6.2 The aim is to give children and young people with special educational needs and/or disabilities and their parents or carers greater independence, control and choice in decisions about them. The intention is that the needs of these children and young people and their carers are assessed in a more holistic way, with greater prominence given to their wishes and views. The changes include:
 - Replacing old style Statements of Special Educational Needs with a new birth-to-25 Education, Health and Care plan (“EHC plans”);
 - Offering families the option of personal budgets to buy the services they require to support their child’s special educational needs;
 - Improving cooperation between all the services that support children and their families, particularly requiring local authorities and health authorities to work together.

- Introducing a new duty for local authorities to ensure that special educational provision is integrated with health and care provision through 'joint commissioning' to secure better provision;
 - An obligation on local authorities to publish information about their "local offer". The local offer is the services a local authority expects to be available from a wide range of providers for children and young people with special educational needs. Local authorities will keep their local offer under review and revise it. The local offer must include information about the provision the local authority expects to be available in its own area for children and young people with special educational needs and outside of its area for the children and young people for whom it is responsible, regardless of whether or not they have EHC Plans.
- 6.3 By 1 September 2014, the Local Authority must publish a plan setting out the arrangements for conversion to EHC Plans. There are currently 660 Statements of SEN and 146 post 16 Learning Difficulty Assessments (LDA). The expectation is that the vast majority of individuals with a Statement of SEN will transfer to EHC Plans by April 2018. Young people with an LDA can request an EHC Plan and one will be issued if needed.
- 6.4 Whilst the government has provided some funding in recognition of the costs of this, in reality the work is not just an administrative exercise. It requires a change of thinking and practice by education, health and care staff in relation to assessment of need, co-producing plans with children and families themselves.
- 6.5 **Adoption**
- 6.6 The government has a longstanding intention to increase the number of children being adopted with less delay. Nationally, children wait an average of 21 months between entering care and moving in with an adoptive family. In Herefordshire the average wait is 15 months and Herefordshire is one of only 36 local authorities in England to meet the timescales set on the national adoption scorecards. The service has recently been recognised as Good in the OfSTED inspection of safeguarding.
- 6.7 The Act promotes fostering for adoption and improving support for adoptive families and includes:
- A duty on local authorities looking after a child to consider placing the child in a 'Fostering for Adoption' placement where they are considering adoption;
 - Removal of the requirement to give due consideration to ethnicity. This is already addressed in other factors for consideration when choosing an adoption placement;
 - Requiring local authorities to provide information on adoption support services available in their area;
 - Provision of personal budgets for adoption support services (to be piloted in 10 LA areas);
 - Amendments to the provisions in the Adoption and Children Act 2002 to enable prospective adopters in pilot areas to directly access the national Adoption Register;
 - Giving the DfE power to require councils to outsource adopter recruitment to external agencies where services are underperforming;

- Changes to contact arrangements - limiting the duty of LA to promote contact between children in care and particular people eg parents and giving courts the power to order adoptive parents to prohibit/facilitate contact at the time an adoption order is granted or at any time after.
- 6.8 An Adoption Reform Grant of £168,750 has been awarded for 2014/15 to improve the timeliness and numbers of adopters approved and children placed for adoption. In 2013/14 22 children were matched with adopters and 19 adoptive families were approved.
- 6.9 **The care system and care leavers and the family justice system**
- 6.10 The Act makes changes with the intention that children who are at risk come into the care system quicker and where they chose can stay in the system longer to support their transition into adulthood. The following has been introduced:
- A 26-week time limit for completing care and supervision proceedings. In particular cases this could be extended by up to eight weeks at a time if necessary to resolve proceedings justly;
 - The choice of children in care to stay with foster families until the age of 21;
 - Clearer rights of young carers and parent carers to receive support from local authorities;
 - Reform to children’s residential care to make sure homes are safe and secure;
 - Making it a requirement to attend a family mediation, information and assessment meeting to find out about and consider mediation before applying for certain types of court order unless an exemption applies;
 - Sending a clear signal to separated parents that courts will take account of the principle that both should continue to be involved in their children's lives where that is safe and consistent with the child's welfare;
 - Ensuring that expert evidence in family proceedings concerning children is permitted only when necessary to resolve the case justly, taking account of factors including the impact on the welfare of the child;
 - A duty on local authorities to promote the educational achievement of children they look after, including the duty to have a Virtual Headteacher for children in care.
- 6.11 The Act is built upon the recommendations from the Public Law Outline (PLO) introduced in 2010 which triggered the Local Authority into ensuring that the decision making process involved in placing children within the court arena is robust and accountable.
- 6.12 The introduction of the PLO process required local authorities hold a ‘Legal Panel’, otherwise known as a ‘Gateway to Proceedings Panel’ to ensure that any decision to issue for Care Proceedings from the outset avoided drift and delay in children’s lives.
- 6.13 Herefordshire has had a Legal Panel in place since 2011. Due to the transient nature of senior management up until October 2013, the panel had not been as effective as it could have been. Since October 2013 the panel has been chaired by the Head of Service for Fieldwork where a great deal of hard work has gone into driving up the standard of assessments presented at panel, to ensure that social care are compliant with PLO and on track to meet the 26 week time scales once proceedings have been issued.

- 7 **The act also includes a number of new measures to protect the welfare of children, including:**
- New legal duty on schools to support children at school with medical conditions better
 - Making young carers' and parent carers' rights to support from councils much clearer
 - Reforms to children's residential care to make sure homes are safe and secure, and to improve the quality of care vulnerable children receive
 - A requirement on all state-funded schools - including academies - to provide free school lunches on request for all pupils in reception, year 1 and year 2
 - Amendments to the law to protect children in cars from the dangers of second-hand smoke
- 8 **The Act also intends to help people to better balance their work and home life with the following measures:**
- From April 2015, mothers, fathers and adopters can opt to share parental leave around their child's birth or placement. This gives families more choice over taking leave in the first year - dads and mothers' partners can take up to a year, or parents can take several months at the same time
 - From 1 October 2014, prospective fathers or a mother's partner can take time off to attend up to 2 antenatal appointments
 - Adoption leave and pay will reflect entitlements available to birth parents from April 2015 - no qualifying period for leave; enhanced pay to 90% of salary for the first 6 weeks; and time off to attend introductory appointments. Intended parents in surrogacy and 'foster to adopt' arrangements will also qualify for adoption leave and pay
 - Extending the right to request flexible working to all employees from 30 June 2014
 - Replacing the current statutory procedure, through which employers consider flexible working requests, with a duty on employers to consider with requests in a 'reasonable' manner
- 9 The table attached in Appendix 1 indicates the different areas covered by the Act and an assessment of the current position in terms of implementation.
- 10 It is important to note that though some aspects of the Act require process changes, a number of areas are specifically designed to fundamentally change the experience of children and young people and their families. This is particularly pertinent in relation to the changes in terms of adoption and in terms of children with special educational needs and disabilities. Presentations will be received by the committee on both aspects at the meeting on 1 August 2014.
- 11 The Children and Young People's Partnership is specifically overseeing the transformation programme for children with special educational needs and disabilities and will be reporting to the Health and Wellbeing Board on the system wide implications.

Community Impact

- 12 The successful implementation of the Act will further the council's priorities, particularly in relation to:
- keeping children and young people safe and give them a great start in life and
 - enabling residents to live safe, healthy and independent lives
- 13 Individual children and young people, their families and carers will experience different approaches to service delivery some of which are in place now, others will come into operation from September 2014, whilst other aspects will develop over the next three years as a major change programme.

Equality and Human Rights

- 14 The changes as a result of the Children and Families Act are not prejudicial to service users. The specific reforms relating to SEN are national and an equality impact assessment was conducted as part of the development of the Children and Families Act.
- 15 As set out above different aspects of the implementation of the Act will have different service implications. The implementation of the Act will pay due regard to our public sector equality duty as set out below:

Note: Under Section 149, the "General Duty" on public authorities is set out thus:

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

eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

Financial Implications

- 16 The Government has recognised that the changes that are required will cost local authorities additional money. £169,000 has been given to Herefordshire for 2014/15 to implement the adoption reforms and £235,000 has been given to Herefordshire for 2014/15 to support the implementation of the changes relating to children and young people with special educational needs and disabilities. However, there has been no costs identified or provided for in terms of possible changes to support packages as a result of the implementation of the Act 2014, which requires the local authority and partners to think and act differently and in a more holistic and responsive way to the views and needs of children and young people and their families and carers. Work is ongoing at a national and local level to develop an understanding of the impact of this.

- 17 The Schools Forum has given specific consideration to the High Needs Block Funding requirements, in the light of the National Funding Formula. The new arrangements in Herefordshire have been recognised nationally by DfE as representing good practice. The impact of these changes will need to be kept under review.
- 18 Herefordshire have a Staying Put policy and procedure which supports young people remaining with foster carers post 18 years of age. As a result of extending the period of time young people remain in care the budget for fostering allowance/ post 16 placement spend will be impacted. Where young people are able to remain in foster care/ staying put placement we should see a cost saving in Supported Lodging spend this will need to be monitored via monthly forecasting. We are also waiting for further communication from the government around their contribution towards the Staying Put scheme.

Legal Implications

- 19 The new Children and Families Act 2014 makes many changes to the current way in which services support vulnerable children and focus on needs and outcomes.
- 20 Appendix 1 lists the areas where the council, and other organisations, needs to change its current operations to ensure that it complies with the new duties under the Act.

Risk Management

- 21 There are no risks contained within the recommendations of this report as this is an opportunity for the committee to scrutinise the work of the council to implement the Children and Families Act 2014.
- 22 Risks associated with each aspect of the Act are being addressed through the different service areas affected. The committee will receive presentations on the risks associated with the changes affecting adoption and also those affecting children and young people with SEN and/or disabilities and their families. There is a potential financial risk to the changes for care leavers.
- 22 The requirements placed upon the Local Authority for care proceedings presents significant challenges for social care. The key is robust, analytical and evidenced based social work assessments. The guidance is clear that social workers and advocates within the court arena should not enlist experts within the court. More emphasis is placed upon those professionals who know the children and family to use their own assessment expertise to provide the right information to the court so that timely decisions are made and unnecessary delay is avoided.
- 23 In order for social workers to undertake such in-depth assessments they need their work load to be at a manageable level and a suite of services available to ensure that the direct work within assessment is undertaken to evidence potential change within the family. Such an approach enables the social worker to write and present evidenced based assessments at court and hold good professional credibility within the court arena.
- 24 Until then, courts will continue to require the assistance of expert advice within proceedings. As the requirements of the Act are to complete proceedings within the 26 week protocol, the cost of such assessments falls mainly to the LA.

- 25 The key to meeting the judiciary requirements will be;
- a) Ensure social work caseloads remain at an acceptable level of 18-20.
 - b) Transform family support services and implement by January 2015 to ensure good strong intervention with families makes a real difference in Children's lives.
 - c) Embed evidenced based model of assessment across Children's Services to ensure that the service is robust and able to fully meet the requirements of the Children and Families Act and only in exceptional circumstances will cases be extended beyond the 26 week time table within court arena.
- 26 It is anticipated that over this transitional period there will be increased costs to the Local Authority in meeting the statutory time scales as a result of enforced expert assessments on entrenched and complex court matters. This is a live debate at the Family Justice Board where there is strong Herefordshire representation by the Council's Legal Services and Head of Service for LAC and Fieldwork. It is important to note that Herefordshire as a local authority is not alone as the wider debate around local authorities having to pick up the cost of expert assessment is debated.
- 27 Nationally, there is a risk that the free school meals legislation will not be delivered at the start of September. This is currently a low risk in Herefordshire.

Consultees

- 28 Each aspect of the legislative change has a specific group of stakeholders and consultees.

Appendices

Appendix 1 - Children and Families Act 2014 - Herefordshire Position July 2014

Background Papers

- None identified.