

## OVERVIEW AND SCRUTINY MANAGEMENT BOARD

**Date and Time :-** Wednesday, 30 January 2019 at 11.00 a.m.

**Venue:-** Town Hall, Moorgate Street, Rotherham.

**Membership:-** Councillors Brookes, Cowles, Cusworth, Evans, Keenan, Mallinder, Napper, Sansome, Short, Steele (Chair) Walsh and Wyatt.

This meeting will be webcast live and will be available to view [via the Council's website](#). The items which will be discussed are described on the agenda below and there are reports attached which give more details.

Rotherham Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair or Democratic Services Officer of their intentions prior to the meeting.

### AGENDA

1. Apologies for Absence

To receive the apologies of any Member who is unable to attend the meeting.

2. Minutes of previous meetings (Pages 1 - 36)

To approve the minutes of previous meetings of the Overview and Scrutiny Management Board held on 17 October, 7, 14 and 28 November and 12 December 2018 as true and correct records of the proceedings.

3. Declarations of Interest

To receive declarations of interest from Members in respect of items listed on the agenda.

4. Questions from Members of the Public and the Press

To receive questions from members of the public or press who are present at the meeting.

5. Exclusion of the Press and Public

To consider whether the press and public should be excluded from the meeting during consideration of any part of the agenda.

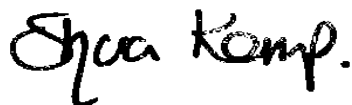
### For Information/Monitoring:-

6. Children and Young People's Services Budget Monitoring - High Needs Finance Update and Budget Sustainability Options (Pages 37 - 52)

Cabinet Portfolio: Children's Services and Neighbourhood Working

Strategic Directorate: Children and Young People's Services

7. Evaluation of Public Spaces Protection Order for the Town Centre (Pages 53 - 63)  
Cabinet Portfolio: Waste, Roads and Community Safety  
Strategic Directorate: Regeneration and Environment
8. Proposed Public Space Protection Order - Fitzwilliam Road, Rotherham (Pages 64 - 92)  
Cabinet Portfolio: Waste, Roads and Community Safety  
Strategic Directorate: Regeneration and Environment
9. Youth Cabinet/Young People's Issues  
  
To receive an update on the activities of the Youth Cabinet and other Young People's Issues.
10. Work in Progress - Select Commissions  
  
To receive updates from the Chairs of the Select Commission on work undertaken and planned for the future.
11. Call-in Issues  
  
To consider any issues referred for call-in from recent Cabinet meetings.
12. Urgent Business  
  
To determine any item which the Chair is of the opinion should be considered as a matter of urgency.
13. Date and time of next meeting  
  
The next meeting of the Overview and Scrutiny Management Board will be held on Wednesday 13 February 2019 at 11.00 a.m. in Rotherham Town Hall.



SHARON KEMP,  
**Chief Executive.**

**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**Wednesday, 17th October, 2018**

Present:- Councillor Steele (in the Chair); Councillors Cowles, Cusworth, Keenan, Mallinder, Napper, Sansome, Short, Walsh and Wyatt.

The webcast of this meeting can be viewed at:- <https://rotherham.public-i.tv/core/portal/home>

**82. MINUTES OF THE PREVIOUS MEETINGS HELD ON 12 SEPTEMBER AND 3 OCTOBER 2018**

**Resolved:-**

That the minutes of the previous meetings held on 12 September and 3 October 2018 be approved as a true and correct record of the proceedings.

**83. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**84. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS**

There were no questions from members of the public or press.

**85. EXCLUSION OF THE PRESS AND PUBLIC**

The Chair reported that there were no items of business on the agenda that would require the exclusion of the press or public from the meeting.

**86. PETITION - INSTALLATION OF A CCTV CAMERA AT THE MEMORIAL GARDEN, CLIFTON PARK**

Consideration was given to a petition seeking the installation of a CCTV camera at the Memorial Garden in Clifton Park which had been submitted by the family of the late Kurtis Spafford.

Councillor Cooksey addressed the meeting on behalf of the family to explain the reason for submitting the petition. Following the premature death of Kurtis Spafford, his family and friends raised funds for a bench to be positioned in the Memorial Gardens at Clifton Park. This was chosen because of the beauty and seclusion of that part of the park, where people can take time to reflect. However, the bench had been subject to vandalism on a number of occasions, and whilst council officers had restored the bench to original condition, it was felt that such vandalism could occur again.

The fear of further vandalism to the bench had become a source of stress for the Spafford family and they requested that a CCTV camera be installed as a deterrent and to support efforts to reduce anti-social behaviour.

The Cabinet Member for Cleaner Greener Communities responded to the issues raised by the petitioners and expressed her thanks for their attendance. She further indicated that officers had been to the site with a view to the future installation of a camera. Whilst work was ongoing to establish its viability, the service had confirmed that it would increase patrols of the area by park rangers and the police in the meantime. Responding to a question in respect of potential timescales for installation, the Cabinet Member confirmed that it would take a minimum of three months, so it was expected that a camera would be installed by the beginning of the 2019-20 financial year.

The Chair thanked the petitioners and Cabinet Member for their attendance.

Having reflected on the comments of the petitioners and the update provided by the Cabinet Member, the Board felt that action should be progressed in accordance with that set out by the Cabinet Member above. It was therefore

**Resolved:-**

1. That the action proposed by the Cabinet Member for Cleaner Greener Communities be supported.
2. That arrangements be made for the installation of a camera at the Memorial Garden as soon possible and at the latest by the start of the 2019-20 financial year.

**87. OUTCOMES FROM THE IMPROVING LIVES SELECT COMMISSION WORKSHOP SESSION - COMPLEX ABUSE INVESTIGATION**

Consideration was given to a paper presented by Councillor Clark, the former Chair of the Improving Lives Select Commission, which outlined the outcomes and recommendations from a workshop session held by the Improving Lives Select Commission on 24 April 2019. The purpose of the workshop was to seek assurance and further understanding of the extent to which agencies are working effectively together to address complex abuse.

It was reported that the Improving Lives Select Commission had considered the report at its meeting on 18 September. It was recommended that the report and recommendations be submitted to Overview and Scrutiny Management Board and from there, presented to a future Council meeting for information to share the findings with the wider membership.



The following recommendations had come from the workshop:-

- That further investigations takes place to establish the low rate of neglect referrals from dental health services.
- That information is shared in line with existing operational protocols and on a 'need to know' basis with ward members for the purpose of signposting residents appropriately.
- That the appropriate agencies ensure that the GDPR does not act as a barrier to the appropriate sharing of information.
- That further representation is made by the LSCB to the CPS and relevant Court Services to raise the issue of how all agencies can take timely action to safeguard children at risk of flight.
- That a further update be submitted to Improving Lives Select Commission in 12 months' time.

Members welcomed the report and recommendations from the Select Commission and felt it was a positive reflection on the work being undertaken.

**Resolved:-**

1. That the report and recommendations, as outlined in Paragraph 9 of Appendix 1, be approved.
2. That the scrutiny review be forwarded to the Council for its consideration.
3. That the response of the Cabinet and partner organisations to the recommendations be reported back to the Overview and Scrutiny Management Board.

**88. IMPLEMENTATION OF THE EARLY HELP STRATEGY 2016-2019: 'PHASE TWO & PHASE THREE'**

Consideration was given to a report concerned with proposals for the implementation of Phase Two & Phase Three of the Early Help Strategy 2016-2019, following the 90 day public, partner, staff and young people's consultations which began in April 2018 and which concluded in July 2018. The report provided a summary of the ninety day consultation activity, feedback on the proposals from staff, service users and partners and an overview of how the responses had informed the final proposals. The report also covered the approved savings considered at the Overview and Scrutiny Management Board on 14 December 2017.

Councillor Cusworth providing the following feedback from the Improving Lives Select Commission who had looked at the issues in details:-

- Members were assured around children centres that de-registration would not lead to loss of service. Examples were provided to Members of different and improved delivery models
- Members had sought assurance that service level agreements would be in place with schools in respect of youth service provision (once approval had been given)
- Members were assured that rationalisation of job descriptions would not have detrimental impact on service users and that there was a good focus on staff development
- Members were assured that team would have blend of skills/specialisms
- Members had raised concerns whether asset transfers could deliver savings in timescales, as this was considered an ambitious target
- Members expressed concerns about lack of engagement with children and young people and other service users – want to review in September 2019 – with focus on seeking children and young people/service users views
- Members questioned the exit survey as a measure, specifically whether this had captured views of Early Help users who had been escalated to social care
- Member raised no concerns in respect of the equality impact assessment

Members sought reassurances that the public were fully on board with proposal. In response, the Cabinet Member explained that whilst the proposal was to de-register Children's Centres, the buildings would remain in place and this would not cause an issue because 70% of contacts with families were not in the Council's own buildings, but in other community locations. The essence of the proposals was to take the service to families, rather than binding it to specific buildings or locations.

Following on, Members sought clarification in respect of the future use of the buildings. The Cabinet Member again reiterated that the Children's Centres were proposed to be de-registered, rather than closed. The Acting Strategic Director of Regeneration and Environment confirmed that where buildings were surplus to the requirements of the service, they would return to the corporate landlord estate.

Reflecting on the fact that the vast majority of young people would grow up without intervention from the service, the proposed move to a targeted service model was considered to make sense, but Members sought further assurances in respect of how targets would be detected in future. In response, the Cabinet Member indicated that neighbourhood working would help with the process by enabling services to work closer together to provide and share intelligence. The bottom up and local intelligence model would be critical to establishing this.

Councillor Napper referred to consultation that had taken place in Silverwood ward which had identified youth provision as the biggest issue for local residents. He further explained that young people have to travel by bus and use buildings for youth activity in the ward and specifically referred to the reluctance of academy schools to have anything take place after school hours. In response, the Cabinet Member offered to meet with Councillor Napper in due course to continue discussions on options available.

Assurances were sought that the proposal for integrated youth offending teams would work, as Members considered that these had been more effective when operating separately. In response, it was explained that officers were trained to deal with a whole family, rather than just an individual so that the influencing factors can be considered and provide an added advantage. Furthermore, the Cabinet Member for Waste, Roads and Community Safety, who was also the Chair of the Safer Rotherham Partnership, referred to that body's statutory oversight of Youth Offending services. The Board had also scrutinised and questioned the proposals and felt that the direction of travel was very positive.

**Resolved:-**

1. That Cabinet be advised that the recommendations be supported.
2. That Improving Lives Select Commission keeps a watching brief on the implementation of Phase 2 & 3 of the Early Help Review.
3. That an update be provided in March 2019 in respect of the progress in establishing Service Level Agreements with schools for youth service provision and related transfer of assets.
4. That an update be provided in September 2019 to reflect how the service is capturing the child/young person's voice in the work of the Early Help service.
5. That the Cabinet be requested to revisit the exit survey and number of assessments completed by partners as performance measures.
6. That Ward Members be consulted on the transfer or disposal of assets.

**89. MODERN SLAVERY UPDATE AND TRANSPARENCY STATEMENT**

Consideration was given to a report which provided a brief overview of planned activity in relation to modern slavery for the financial year 2018/19. This report also provided a draft statement for publication in line with the requirements laid down by the Modern Slavery Act 2015.

Members sought assurances about the measures in place to monitor modern slavery in the agricultural and construction industries. In response, it was explained that work had started with car wash businesses, but there was an awareness of high risk sectors across the economy. Intelligence was considered to be key in addressing the issues underpinning modern slavery and working with the Gangmasters Licensing Authority.

Reflecting on the guidelines detailed in the paper, Members queried whether work had reached a point where detail could be provided on implementable policies or whether that remained work in progress. In response, the Cabinet Member indicated that work was underway and more work remained to be done.

Members were pleased to see that this work was in progress and welcomed the Council's recent adoption of the Co-operative Party's Charter Against Modern Slavery.

**Resolved:-**

That the Cabinet be advised that the recommendations be supported.

**90. GOVERNMENT CONSULTATION - PLANNING PROCESS AND SHALE GAS**

Consideration was given to a report introducing draft responses on behalf of the Council to two government consultations relates to the planning process and shale gas. The two papers were:-

- on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right
- on inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime

Members noted that the draft responses to both consultation papers were not supportive of the proposals. The Board indicated its support for the response to be sent to the Secretary of State.

**Resolved:-**

That the draft responses to the government consultations be supported.

**91. FORWARD PLAN OF KEY DECISIONS - OCTOBER TO DECEMBER 2018**

Consideration was given to the Forward Plan of Key Decisions covering the period from 1 October to 31 December 2018 and Members identified the following items for pre-decision scrutiny:-

**Resolved:-**

That the following items on the Forward Plan of Key Decisions be submitted for pre-decision scrutiny:-

- Medium Term Financial Strategy
- Sex Establishment Policy
- Community Energy Switching Policy
- Submission of the Clean Air Zone Outline Business Case to the Joint Air Quality Unit

**92. URGENT BUSINESS**

The Chair reported that there were no items of business requiring the Board's urgent consideration.

**93. DATE AND TIME OF NEXT MEETING****Resolved:-**

That the next meeting of the Overview and Scrutiny Management Board be held on Wednesday 24 October 2018 at 11.00 a.m. in Rotherham Town Hall.

**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**Wednesday, 7th November, 2018**

Present:- Councillor Steele (in the Chair); Councillors Cowles, Cusworth, Evans, Mallinder, Napper, Sansome, Short, Walsh and Wyatt.

Apologies were received from Councillors Brookes and Keenan.

The webcast of the Council Meeting can be viewed at:-

<https://rotherham.public-i.tv/core/portal/home>

**1. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**2. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS**

A question was from received from Mr. Harron in respect of the provisions for members of the public to be present in the room for Members' debate on requests to review responses from the Council to petitions and why the webcast was not used to record the debate.

The Chair responded that it was not practice for parties connected to petitions to remain in the room whilst Members debated their recommendations on the request to review. All officers beyond those advising the committee on matters of procedure would also be asked to leave the room for such discussions. In those circumstances it would not be appropriate to record the debate via the webcasting facility.

As a supplementary question, and referring to a later item on the agenda for the meeting, Mr Harron asked whether he could be present in the room to listen to the debate. In response, the Chair confirmed that all present would be asked to leave and the webcast equipment would be turned off. The outcome of the debate and the reasons for the decision would be reported in public session, on the webcast of the meeting and in the minutes of the meeting.

**3. EXCLUSION OF THE PRESS AND PUBLIC**

The Chair advised that he would ask members of the public and officers to leave the meeting during the deliberation of the request to review the response to a petition concerning the return of a publication (agenda item 4).

#### **4. REQUEST FOR REVIEW OF PETITION RESPONSE - RETURN OF PUBLICATION**

It was reported that a request had been received for the Overview and Scrutiny Management Board to review the response provided by the Council to a petition calling for the Strategic Director of Children and Young People's Services (or the Chief Executive) in Rotherham Borough Council (RMBC) to issue a public statement giving the reasons for deciding to return 1400 copies of the publication 'Voices of Despair Voices of Hope'.

Members were advised that under the petition scheme, Overview and Scrutiny Management Board will determine the request for the review and may take various actions depending on the information provided to it.

Mr. L. Harron attended the meeting as lead petitioner and set out his reasons for requesting the review of the response provided.

Referring to Mr Harron's representations, Members sought clarification of what was meant by 'everyone' requiring a public statement. In response, Mr. Harron confirmed that he meant the people who had provided their voices for the publication 'Voices of Despair Voices of Hope'. Following on, Members also sought to understand how important it was to Mr. Harron that the publication was returned by the Council. In response, Mr. Harron explained that reasons had not been given for the return of the publication and he considered that there had been dishonesty on the part of officers who had been part of the decision making process. Mr. Harron stated that he did not want to focus on dishonesty in this meeting.

Clarification was sought as to how many survivors were being represented through the petition. In response, Mr. Harron indicated that he was not prepared to indicate and that the petition was not about him, but reiterated that the outcome he wanted from a review of the response to the petition was for the original request in the petition to be acted upon by the Council.

Reference was made to the return of the publication and Members queried what had happened to the returned copies sent to Mr. Harron. In response, Mr. Harron confirmed that he had redistributed copies of the publication very quickly, with two copies sent to each MP and councillor representing the borough. Furthermore, Mr. Harron suggested that Members should seek to understand the decision making process that had led to the return of the publication following spend of £6,000 in a period of austerity.

Members sought to understand what had been communicated to Mr. Harron at the time that the publication was returned to him. In response, Mr. Harron explained that he had received an explanation from an Assistant Director in Children and Young People's Services, but he considered the reasons given to be nonsense. He added that no officers of the Council had met with him to give him honest reasons for the return of the publication. Whilst he had met with the Chief Executive and a ward councillor, he considered that no one had provided truthful reasons. Whilst the present Chief Executive was not employed by the Council at the time of the return of the publication, Mr. Harron considered that she had the opportunity to state why the decision was taken based on information that he considered to be available to the Chief Executive.

In summary, Mr. Harron indicated that he wanted the Overview and Scrutiny Management Board to dismiss the response provided by officers. It was a matter of regret to him that the line of questioning from Members had drawn the discussion into the issues he considered to demonstrate dishonesty.

Members adjourned the meeting to have a private discussion of the issues raised in the request. Having considered the representations made by Mr. Harron, Members considered that they did not wish to review the response further and were satisfied with the information provided. Members also identified the following recommendations, which were informed by the questioning of and responses provided by Mr. Harron:-

1. That, in future, the lead petitioner and other petitioners be recommended to address petitions to the Council, rather than seeking action to be taken by a specific post holder.
2. That the lead petitioner be advised to pursue correspondence on this subject matter with Cabinet Members and officers, rather than using the Council's petition scheme.
3. That the lead petitioner be advised that the Council's Complaints Procedure is the appropriate route for such matters to be responded to by the authority.
4. That the lead petitioner be advised of the process to be followed in reporting concerns regarding the conduct of officers, which is the appropriate route for such concerns to be raised rather than petitions.

**Resolved:-**

1. That the request for a review of the response to the petition in respect of the return of the publication 'Voices of Despair Voices of Hope' be declined.



2. That the Chair of the Overview and Scrutiny Management Board write to the lead petitioner to confirm the outcome of the Board's deliberations and the additional recommendations.

## **5. CHILDREN'S SERVICES FINANCIAL MONITORING AND REVIEW 2018/19**

Consideration was given to a report submitted by the Strategic Director of Children and Young People's Services in respect of the financial position of the directorate, which outlined the current budget position and pressures; in-year mitigations; future plans and progress of sustainability plan and demand management initiatives.

It was reported that demand on Children's Services was high and had continued to rise across all key areas which included children in need of help, protection and children requiring care. The main factors that had impacted on demand were:

- Complex abuse inquiry and Operation Stovewood – the service has worked with over 600 children that have been referred from these investigations and there are currently over 200 open cases where children are in need, have a child protection plan or are in care;
- Improved social work practice intervention in legacy cases specifically re neglect; and
- National increase in statutory intervention and a national budget shortfall of £2bn predicted by 2020.

The Children's Services current budget for 2018/19 was £58.7m with forecast expenditure at £71.7m (including a contribution of £1m from reserves for 2018/19 only). It was explained that an in-year pressure of £13m, which had increased compared to the £10m previously reported, was predicted after mitigations due to a continued net increase in the number of children admitted into care.

Both the Cabinet Member and the Strategic Director explained to Members that it was difficult to benchmark the financial position of the directorate given the recent history of Children's Services in Rotherham. However, it was considered that there were reasons to be optimistic with in care numbers remaining stable, which had provided confidence that measures taken and investments previously made were having some impact.

Further confidence was taken from the average age of children coming into care reducing in the current financial year. All of statistics available provided by an indication that demand was beginning to level and slow a little. The Strategic Director indicated that the directorate would remain focused and concerned about the number of in-house foster carers and a lot of work was being done to improve the foster care situation.

In response to a question in respect of thresholds for bringing children into care, officers confirmed that Ofsted had reviewed cases during their inspection of the service in November and December 2017 and had not found any child in care where it was not warranted. Furthermore, a number of initiatives were in their infancy at the time of the Ofsted inspection, such as work around Edge of Care and Family Group Conferencing, which could enable a child to remain with family or extended family. Senior officers were confident that was enough oversight to know that Heads of Service were making safe decisions on a day by day basis.

Assurances were sought by Members that the directorate was getting to grips with the staffing pressures facing the budget in view of the projected overspend of £1.4m on employee costs. In response, reference was made to the significant reduction in the number of agency employees within the directorate compared to the previous financial year. It was noted that an underspend was projected on basic pay due to the number of vacancies in the service and that this was used to offset the anticipated overspend on other staffing costs. Additional clarification was provided in respect of the process followed before seeking agency staff to fill vacancies and it was explained that there was almost always a gap in recruitment given the timescales for recruitment following receipt of notice from a departing employee. Furthermore, all decisions were subject to challenge and oversight by the Workforce Management Board, a corporate group of Assistant Directors, chaired by the Assistant Chief Executive.

Reference was made to expected savings that had previously been identified from the directorate's business support function and how delivery of savings was being monitored. It was explained that good progress had been made to implement the review of this service and new technology was being trialled, such as use of digital recording of meetings, to enable the delivery of savings.

Members sought clarification in respect of the impact of Operation Stovewood and the Complex Abuse Inquiry on the financial position. In response, it was confirmed that officers from the service were meeting with colleagues from the National Crime Agency and the Office of the South Yorkshire Police and Crime Commissioner to identify the real costs associated with these areas of work.

**Resolved:-**

1. That the financial monitoring update in respect of the Children's Services be noted.
2. That greater clarity be provided to Members in future reports in respect of timescales and milestones for addressing in-year pressures.

3. That the Chair and Vice-Chair of Overview and Scrutiny Management Board and the Chair of Improving Lives Select Commission meet with the Deputy Leader and Strategic Director of Children and Young People's Services to confirm future arrangements for monitoring of the financial position of the directorate by Overview and Scrutiny.

## 6. ANNUAL COMPLAINTS REPORT

Consideration was given to a report submitted by the Assistant Chief Executive presenting the annual summary of complaints and compliments received by the Council. The report also sought to identify key trends within complaints and compliments over a five year period.

The report detailed a number of performance headlines which compared the 2017-18 year with previous years. The annual report also included several recommendations regarding how complaints handling and reporting could be improved over 2018/19:-

- Exploring how the new e-case management system can be utilised to keep Elected Members routinely apprised of progress regarding complaints.
- Developing the training offer for officers who sit outside of the Complaints Team.
- Focussing more on the lessons learned from upheld complaints and how these can be addressed effectively.
- Continuing to report the key themes emerging from customer feedback into Directorate Leadership Teams and including complaints as a key source of intelligence within the performance review sessions for senior officers.
- Working to improve performance within statutory timescales.
- Reporting on improved intelligence around complainants, particularly with regards to equality and diversity information.
- Developing further the way that complaints are categorised and tracked, to better reflect the complexity and diversity of the feedback received.
- Using the new neighbourhood working model to work with residents on the issues that matter most to them, including any opportunities to learn from feedback and complaints

Members welcomed the report and provided positive feedback on the presentation of the information, which had been significantly improved upon from previous years. In discussing the report, Members sought reassurances and clarification in respect of work being done to ensure that responses to complaints were timely and effective in dealing with the issues raised by the public. As an indicator of public confidence in the Council, it was recognised that the handling of complaints would remain an area of interest for scrutiny in future.

**Resolved:-**

That the report be noted.

**7. YOUTH CABINET/YOUNG PEOPLE'S ISSUES**

It was reported that a response to the Children's Commissioner Takeover Challenge report and recommendations was expected to be submitted to the Cabinet for approval in January 2019. After that, it would be reported to Overview and Scrutiny Management Board in February 2019.

Members were reminded of the invitation issued by the Rotherham Youth Cabinet to attend the 2019 Manifesto Launch on Tuesday 13 November 2018 at 5.00 p.m. in Rotherham Town Hall.

**Resolved:-**

That the update be noted.

**8. WORK IN PROGRESS - SELECT COMMISSIONS**

The Chairs of the Select Commissions provided an update on current and planned activity:-

**Health Select Commission**

Councillor Evans reported that at the last meeting the Commission had received:-

- Social Emotional and Mental Health Strategy Progress Report
- Child and Adolescent Mental Health Services Update
- Feedback from a Performance Sub Group which had focussed on the provisional year end performance of the Adult Social Care Outcomes Framework
- Feedback from the Joint Health Scrutiny Committee which included a presentation and Strategic Outline Case presented to the CCGs and hospitals recently which had been developed following stakeholder feedback to the Hospital Services Review report

**Improving Lives Select Commission**

Councillor Cusworth reported that the Commission had met on the previous day and had considered reports in respect of:-

- Demand Management and Placement Sufficiency – where Members had asked for the refreshed Sufficiency Strategy to be submitted to Improving Lives Select Commission in March 2019, with specific reference to the eight OFSTED action points for improvement
- 2018 Education Performance Outcomes

The Chair further reported that the Committee had requested the Cabinet Member for Children and Young People's Services and Neighbourhood Working to organise a visit to University College Rotherham for Select Commission Members.

### **Improving Places Select Commission**

Councillor Mallinder reported that the Commission had met in the previous week and had received an update on the implementation of the Home to School Transport Policy, where Members had recommended that officers raise the possibility of using contactless cards with SYPTe/bus companies. A further recommendation was made for in respect of the appeals process for the renewal of a home to school free bus pass to be reconsidered in those cases where a family's circumstances had not changed from the previous year.

Updates were provided on the Homelessness Strategy and proposed amendments to the Housing Allocations Policy which was due to be considered by the Cabinet in January 2019.

## **9. CALL-IN ISSUES**

The Chair reported that there were no call-in issues following the most recent Cabinet meeting.

## **10. URGENT BUSINESS**

The Chair reported that there was no business that required urgent consideration by the Board.

## **11. DATE AND TIME OF NEXT MEETING**

### **Resolved:-**

That the next meeting of the Overview and Scrutiny Management Board be held on Wednesday 14 November 2018 at 11.00 a.m. in Rotherham Town Hall.

**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**Wednesday, 14th November, 2018**

Present:- Councillor Steele (in the Chair); Councillors Cowles, Cusworth, Mallinder, Napper, Sansome, Short, Walsh and Wyatt.

Apologies were received from Councillors Evans.

The webcast of the Council Meeting can be viewed at:-

<https://rotherham.public-i.tv/core/portal/home>

**1. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**2. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS**

There were no questions from members of the public or press.

**3. EXCLUSION OF THE PRESS AND PUBLIC**

The Chair reported that there were no items of business on the agenda that would require the exclusion of the press or public from the meeting.

**4. CONSULTATION ON THE ADOPTION OF SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AND A ROTHERHAM SEX ESTABLISHMENT LICENSING POLICY**

Consideration was given to a report which was due to be considered by the Cabinet at its meeting on 19 November 2018 which outlined a proposal to consult on the adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 that, following amendment through the Policing and Crime Act 2009, classified the following establishments as sex entertainment venues:

- Lap, pole and table dancing;
- Strip shows;
- Peep shows and live sex shows.

The report sought consent from Cabinet to recommend that Council approve the commencement of public consultation on the adoption of the Schedule. The adoption of the Schedule would give local communities a greater say about the presence of sex establishments, including sex entertainment venues, sex shops and sex cinemas, and would allow the local authority to more effectively regulate such premises through a formal Sex Establishment Licensing Policy. The report to Cabinet also sought approval to begin public consultation on a proposed Sex Establishments Licensing Policy to run parallel to consultation on the adoption of Schedule 3.

Members welcomed the report, along with the accompanying equality analysis, and queried what groups would be consulted and how they would be targeted. In response it was confirmed that there was a wide ranging indicative list of groups and organisations who would be consulted, which included women's refuges, schools, youth facilities and places of worship. The intention was to undertake a structured consultation with these groups and with existing establishments in the borough, along with industry representatives and workers.

Clarification was sought as to whether the Council envisaged that licensing fees would vary for different types of venue. In response it was confirmed that a fee had been set out and all venues were classed in the same way within statute, but the consultation would provide an opportunity to express views on what was proposed.

The proposals had been designed to regulate business and provide a robust policy for regulation that protects the community around them and people working within those businesses. Members queried whether there was confidence in the proposals to avoid challenge. Officers indicated that there was the potential for legal challenge by the industry and those against the industry.

Members further highlighted the need for safe consultation with those working within the industry to protect their welfare, especially those who could be considered to be vulnerable. The Cabinet Member for Waste, Roads and Community Safety agreed with the point on worker welfare and the need for safe consultation with those individuals. Members further added that it would be helpful if officers could establish a means for safe and anonymous consultation for workers in the industry.

**Resolved:-**

1. That Cabinet be advised that the recommendations be supported.
2. That a wide ranging consultation be supported.
3. That engagement with industry workers take place on a safe and anonymous basis during the consultation period.

**5. SEPTEMBER 2018/19 FINANCIAL MONITORING REPORT**

Consideration was given to a report which set out the financial position of the Council as at the end of September 2018, which was based on actual costs and income for the first half of the financial year with forecasts for the remaining six months of 2018/19.

It was reported that at September 2018, the Council needed to identify a further £3.1m of cost reduction actions by financial year-end in order to achieve a balanced financial outturn, after taking account of the £10m budget contingency approved within the 2018/19 budget. The overspending against budget in the Children's and Young People's Services directorate had continued in the current financial year as a result of demand for services outstripping budget capacity. The number of children in care had continued to increase and the forecast overspend on Children's Services had increased to £15.7m.

The increased number of Looked after Children also placed significant pressure on Legal Services within the Finance and Customer Services directorate. The forecast overspend for Legal Services was £1.488m. The Finance and Customer Services directorate overall had forecast to outturn within budget after putting into place a range of mitigating actions to compensate for the legal service forecast overspend. The Adult Care, Housing and Public Health directorate remained on track to bring its overspend down to £6.221m. A combination of increased client numbers, the rising cost of care packages, and delays in delivery of savings plans had led to pressure on budgets across all client groups. A recovery plan had been developed to address previously undelivered savings and project plans were being finalised with the expectation that further savings would be identified from that activity. The Regeneration and Environment directorate had forecast a balanced budget, although it was facing challenges from a combination of declining business from the School Meals service and challenges with delivery of budget savings, including transport and property savings.

Members referred to the report stating that initial target levels of children in care not being achieved as planned and sought clarification as to who was monitoring and discussing progress and what was actually taking place. In response, officers explained that this did not mean that activities were not having the correct effect, but there were higher numbers of referrals to the Council. A significant number of senior officers from Finance and Children and Young People's Services were analysing data and information, whilst the Chief Executive and Cabinet Members were also reviewing this on a regular basis to check that the service is doing what it should do and needs to do and then to check what else was happening beyond that which meant that the cost of the service was not reducing.

Further clarification was sought in respect of the delays in delivering savings from the Regeneration and Environment directorate. In response, it was confirmed that there was a rigorous process to monitor actual and approved savings. Where savings had not been delivered they had been mitigated and alternative actions.



Members queried how many children had been estimated to be referred to the Council for the current financial year. In response, it was confirmed that a budget was in place for between 460-480 children, yet the current figure was 657 looked after children. Following on, Members queried how many looked after children were being budgeted for in the 2019-20 financial year. In response, officers explained that the Medium Term Financial Strategy was in the process of being updated, however the service did not expect to see a significant reduction in numbers. Members then sought clarity in respect of the impact on the budget if spend continued to rise or be maintained its current level. In response, officers explained that financial figures were based on what was happening with the service. In broad figures, the cost per looked after child varied between £40-50k per child, and with approximately 200 more children in care than some years ago, that represented a significant increase in cost. Ultimately, if children needed to be protected, the authority had a statutory duty to provide that protection. With regard to the budget, this would mean a further reduction of budgets for other Council services if it continued, however work was ongoing to ensure that a balanced budget could be set.

Members accepted that it takes time for children to progress through services and therefore the savings to be accrued will take time to be realised, so it was not surprising that targets were initially missed. Assurances were sought that savings would be followed up, even where initiatives were not progressing to timescale, to ensure that they reach their target. Officers confirmed that there would always be opportunities to improve the process of following up on savings delivery. Within Children and Young People's Services, numbers are planned and monitored, however it is the unpredicted demand which had caused problems.

Members referred to progress in respect of customer and digital services and the use of vacancy management. Reflecting the experience of the roll out of new green waste bins, it had caused questions to be asked around whether big service changes could be met as residents had been unable to get through to the Council. In response it was acknowledged that work was ongoing to better understand and anticipate demand for services.

**Resolved:-**

That the Cabinet be advised that the recommendations be supported.

**6. URGENT BUSINESS**

The Chair reported that there were no items of business requiring the Board's urgent consideration.

**7. DATE AND TIME OF NEXT MEETING**

**Resolved:-**

That the next meeting of the Overview and Scrutiny Management Board be held on Wednesday 28 November 2018 at 11.00 a.m. in Rotherham Town Hall.

**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**Wednesday, 28th November, 2018**

Present:- Councillor Steele (in the Chair); Councillors Brookes, Cowles, Cusworth, Evans, Mallinder, Napper, Sansome, Short, Walsh and Wyatt.

Apologies were received from Councillor Keenan.

The webcast of the Council Meeting can be viewed at:-

<https://rotherham.public-i.tv/core/portal/home>

**8. DECLARATIONS OF INTEREST**

Councillor Walsh declared a personal interest in item 5 (Community Energy Switching Scheme) on the basis of his role as a Corporate Member of the Energy Institute.

The Chair (Councillor Steele) declared a personal interest in item 6 (Universal Credit Roll Out in Rotherham) on the basis of his role as a trustee of the Citizens Advice Bureau, which was providing support to individuals.

**9. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS**

There were no questions from members of the public or press.

**10. EXCLUSION OF THE PRESS AND PUBLIC**

The Chair advised that agenda item 5 (Community Energy Switching Scheme) contained exempt information which the Board would wish to discuss. Consequently, it was

**Resolved:-**

That under Section 100(A)4 of the Local Government Act 1972, the public be excluded from the meeting for agenda item 5 (Community Energy Switching Scheme) on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12(A) of such Act indicated, as now amended by the Local Government (Access to Information)(Variation) Order 2006.

**11. COMMUNITY ENERGY SWITCHING SCHEME**

Consideration was given to a report due to be considered by the Cabinet on 17 December 2018 concerning proposals to establish a Community Energy Switching Scheme.

It was reported that the proposed scheme would be open to all Rotherham residents and would reduce the number of households paying high tariffs for gas and electricity and reduce fuel poverty. Although the scheme would be open to all residents it should be particularly beneficial for hard to reach and vulnerable tenants that were generally considered to be the groups that required the greatest support to identify and change to a cheaper tariff.

It was expected that residents could save around £200 to £300 per year in an average 3 bedroom semi-detached houses. A Community Energy Switching Scheme report had been discussed at the former Cabinet and Commissioners' Decision Making Meeting on 9 July 2018, where it had been agreed that a feasibility study should be undertaken and a report be brought back for consideration. Having completed the feasibility study, approval was sought to carry out an OJEU procurement process to identify a potential partner to develop a community energy switching scheme and inform a business case that will be developed based on the results of the tender.

Members sought clarification in respect of the proposed marketing campaign and advised that it would be crucial to target groups and individuals, with GP surgeries be a suggested venue for marketing materials to be placed. In response it was confirmed that the marketing strategy was subject to development, however it could not be rolled out until the procurement process had been completed, which mean that June or July 2019 was expected to the date for roll out. It was noted that additional resources would be required to undertake this work.

Members sought assurances the customer support and service standards were built into the specification for the scheme to ensure that the local people would receive a high quality service, as well as lower costs. It was also felt that this was an important work stream and, as such, the Cabinet Member for Jobs and the Local Economy should maintain oversight over performance in respect of customer support and service standards.

Further discussions were held in respect of the procurement process and the criteria that may be used in determining which scheme and supplier would be chosen.

**Resolved:-**

1. That Cabinet be advised that the recommendations be supported.
2. That Cabinet be asked to ensure that customer support and service standards are built into the tender framework.
3. That the performance of customer support and service standards be reported on a quarterly basis to the Cabinet Member for Jobs and the Local Economy.

**12. UNIVERSAL CREDIT ROLL OUT IN ROTHERHAM**

Consideration was given to a report submitted by the Strategic Director of Adult Care, Housing and Public Health in respect of the roll out of Universal Credit across the borough on 11 July 2018. It was reported that individuals move onto the Universal Credit system when they are a new claimant or if there is a change in their circumstances which would trigger the changeover from legacy benefits.

The report explained that working groups continue to meet at both strategic and operational levels, which have brought together service providers, the Department for Work and Pensions, Jobcentre Plus and other relevant partners, including Rotherfed and the Citizens' Advice Bureau.

It was reported that, as at 21 September 2018, there had been 58 referrals for Personal Budgeting Support, of which 43 claimants attended the subsequent appointment, meaning that 26% of referrals had failed to attend. It was advised referral rates needed to be maintained, as the value of grant funding received by the Council was based on forecasted referral rates provided by the Department of Work and Pensions. For Personal Budgeting Support it was anticipated there would be 799 Personal Budgeting Support appointments by 31 March 2019.

It was further reported that the migration of 720 Universal Credit Live Service claimants (single people who made a claim locally between December 2015 and December 2017) commenced on 19 September 2018. It was expected that all claimants in this group would be transferred by December 2018, prior to the national computer system for Universal Credit Live Service claims being switched off early in the New Year. The Housing Service would continue to support all affected tenants to offer support as required given the claimant would need to activate a new claim for the Universal Credit Full Service.

Members sought assurances that the Council was prioritising the residents of Rotherham, rather than the risk of rent arrears hitting the finances of the Housing Revenue Account. In response, it was advised that the Housing Income Team had been restructured to help support tenants with financial advice in the context of Universal Credit. Members observed that the support offered was limited and could not be regarded as an advocacy service. In response to a question regarding contact from the Council when entering arrears, it was confirmed that tenants would receive a notification immediately and a conversation with the service would take place within three weeks of entering arrears.

Members expressed some surprise at the report citing an absence of difficulties being experienced by partners in providing support following the roll out of Universal Credit. In response, it was confirmed that it was still relatively early in the transition and that a further report would break down the issues relating to impact on housing tenants and the broader impact of implementation of Universal Credit on residents in the borough, which would take into account the demand on foodbanks and other support services, including services across the Council. It was recognised that it was still relatively early in the roll out and the Council was not responsible for the implementation, but it was driven by Government through the Department of Work and Pensions (DWP).

Assurances were sought from Members that training for staff in respect of assisting tenants with making claims for housing benefit had taken place across the authority, rather than just in the Housing Service. It was confirmed that there had been a corporate roll out of the training. Further concerns were expressed that communication with DWP was creating issues which were impacting on residents. Further assurances were providing that senior officers were meeting with DWP to ensure that services were more joined up and effective in responding to a moveable issue with the Government's position on Universal Credit being uncertain in some areas.

**Resolved:-**

1. That a further report be submitted to the Board on the impact of the roll out of Universal Credit.
2. That the Chair of Overview and Scrutiny Management Board and the Chair of the Improving Lives Select Commission work with the Scrutiny Officer to assist in the scoping of the future report from the Strategic Director of Adult Care, Housing and Public Health.

**13. YOUTH CABINET/YOUNG PEOPLE'S ISSUES**

The Chair reported that a motion had been submitted for the Council meeting on 5 December 2018 to thank young people for their work in developing the South Yorkshire Transport Charter, which had been developed after a Children's Commissioner Takeover Challenge with Overview and Scrutiny Management Board.

Furthermore he paid tribute to the excellent presentation by the Rotherham Youth Cabinet on 13 November 2019 of the manifesto for the year ahead. Members wished for their thanks to be recorded to the Rotherham Youth Cabinet.

**Resolved:-**

1. That the update be noted.

2. That the thanks of the Overview and Scrutiny Management Board be extended to the Rotherham Youth Cabinet for the excellent launch of their manifesto on 13 November 2018.

#### **14. WORK IN PROGRESS - SELECT COMMISSIONS**

The Chair invited the Select Commission Chairs to provide updates on current and planned activities:-

##### **Health Select Commission**

Councillor Evans reported that the Commission had not met since his last update, but was due to meet on 29 November 2018 where consideration would be given to the role of integrated care and an update on the performance of the drug and alcohol treatment recovery service. The Commission would also be considering themes for spotlight reviews in the coming months.

##### **Improving Lives Select Commission**

Councillor Cusworth reported that there had not been a further meeting since the last update to Overview and Scrutiny Management Board earlier that month. However, at the next meeting on 4 December 2018, the Commission was due to receive the annual reports of the Local Children's Safeguarding Board and Local Adults Safeguarding Board. Furthermore, an update on domestic abuse was expected to be received in January 2019.

##### **Improving Places Select Commission**

Councillor Mallinder reported that the Commission would meet informally on 11 December 2018 to consider proposals to be reported to Cabinet in respect of the Clean Air Zone. Any recommendations from this meeting would be reported to Overview and Scrutiny Management Board on 12 December 2018. The next formal meeting of the Commission was scheduled for 20 December 2018 where reports on Asset Management and the draft Rotherham Skills and Employment Plan were due to be considered.

##### **Resolved:-**

That the updates be noted.

#### **15. CALL-IN ISSUES**

The Chair reported that there were no call-in issues arising from recent Cabinet decisions.

**16. URGENT BUSINESS**

The Chair reported that there was no business requiring urgent consideration by the Board.

**17. DATE AND TIME OF NEXT MEETING**

**Resolved:-**

That the next meeting of the Overview and Scrutiny Management Board be held on Wednesday 12 December 2018 at 11.00 a.m. in Rotherham Town Hall.



**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**Wednesday, 12th December, 2018**

Present:- Councillor Steele (in the Chair); Councillors Cowles, Evans, Keenan, Mallinder, Napper, Sansome, Short, Walsh and Wyatt.

Apologies were received from Councillors Cusworth.

The webcast of the Council Meeting can be viewed at:-

<https://rotherham.public-i.tv/core/portal/home>

**18. DECLARATIONS OF INTEREST**

The Chair declared a personal interest in agenda item 6 (Council Tax Support and the impact of Universal Credit) because of his role as a non-voting trustee of the Citizen's Advice Bureau.

**19. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS**

There were no questions from members of the public or press.

**20. EXCLUSION OF THE PRESS AND PUBLIC**

The Chair advised that item 7 (Rotherham Town Centre Masterplan – Forge Island Agreements) and item 8 (Riverside House Café) included exempt information which would require consideration by the Board. It was

**Resolved:-**

That under Section 100(A) 4 of the Local Government Act 1972, the public be excluded from the meeting for agenda items 8 and 9 on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12(A) of such Act indicated, as now amended by the Local Government (Access to Information) (Variation) Order 2006.

**21. QUARTERLY UPDATE ADULT SOCIAL CARE: THE BUDGET FORECAST AND CONTINUED IMPROVEMENT PLAN UPDATE**

Consideration was given to a report from the Strategic Director of Adult Care, Housing and Public Health to update Members on the budget forecast and continued Improvement Plan in Adult Social Care.

It was reported that original projections estimated the Directorate overspend to be £8.646m. In the year-to-date there had been £1.422m savings achieved in adult social care, with additional savings support from other service areas within the Directorate of £660K. This had reduced the projected overspend to £6,564m with £343K of savings still to be secured. It was further reported that the care package review programme, supported by the promotion of Direct Payments, was on target to achieve the additional £343K required and reduce the 2018/19 overspend to £6.221m. Members noted that other projects were in place to ensure known areas of risk for unplanned, high cost spend were mitigated.

It was further reported that of the 19 key areas of accountability contained within the improvement plan:-

- 8 had progressed on to become routine activity;
- 9 had formed part of the Medium Term Financial Strategy (MTFS) project plans, either directly or as an enabler to delivery;
- 2 had become the focus of DLT challenge sessions - Commissioning and Safeguarding Adults

In presenting the report, the Strategic Director of Adult Care, Housing and Public Health confirmed that good progress was being made in terms of the budget and performance, however focus had moved onto issues that had arisen in recent weeks to ensure that safeguarding was prioritised following closures of residential homes. Transforming care continued to be a high risk for the service because it impacted on the most vulnerable people with very complex needs. The service was working with the CCG to identify specialist placements for those individuals but that presented a significant financial risk, as well as operational risk, in terms of placing those individuals in the right location and service.

Members sought assurances that the overspend against the service would continue to fall. In response, the Strategic Director advised that the overspend remained a challenge for the service, but she felt that it was on the right direction of travel with the level of the overspend decreasing each month since September 2017. The challenge for the service was to increase the pace at which the overspend could be further reduced without increasing risk. Following on, the Strategic Director confirmed that she expected the overspend to reduce significantly in the coming years.

Members sought assurances that the service was capturing positive outcomes from the transformation of adult social care services. It was confirmed that data was being captured from the Wellbeing Forum and it was recognised that more could be done to produce good news stories and disseminate them across the service.

Clarification was sought from Members in respect of the difference between reviews and reassessments and the timescales for both. The Strategic Director explained that a review was undertaken to check whether support plans were still adequate and appropriate, whereas a reassessment was effectively restarting the process and based on need following changes to circumstances. The Strategic Director added that the Council was not out of kilter with other local authorities, with 145 reassessments undertaken in the year, but it remained a significant challenge and all would be done in the next 18 months. Responding to Members' concerns around pace and meeting targets, the Strategic Director indicated that she would return with a specific activity report to provide assurances to Members and also an overview of the requirements of the Care Act 2014 in respect of reviews and reassessments.

Members referred to mental health reviews and what the position was in respect of this area of service. The Strategic Director confirmed that this was an area where relationships needed to be built and suggested that the new Assistant Director of Adult Social Care should return to the Board in 2019 with a report on this area.

Responding to a question in respect of direct payments, the Strategic Director confirmed that there was not a target, but the focus had been on enabling people to make a choice and there had been more of a move towards direct payments. It was further confirmed that a lot of work had been done with staff in respect of understanding and promoting direct payments and this had led to an increase in confidence in that area. The Strategic Director confirmed that the service could present a paper to Members on direct payments. Members indicated that they would welcome information in respect of the cost of commissioning training on direct payments from Active Independence.

**Resolved:-**

1. That the outcomes and performance data from the Excellence in Social Work LGA review be shared with Members of Overview and Scrutiny Management Board.
2. That an update be provided on the Commissioning Strategy.
3. That the Improvement Plan be updated with clear dates and milestones
4. That the Strategic Director of Adult Care, Housing and Public Health liaise with the Scrutiny Team in respect of specific timescales for future reports arising from the discussion in the meeting.

**22. COUNCIL TAX SUPPORT AND THE IMPACT OF UNIVERSAL CREDIT**

Consideration was given to a report submitted by the Strategic Director of Finance and Customer Services in respect of Council Tax Support and the impact of the introduction of Universal Credit in Rotherham on 11 July 2018.

It was reported that Universal Credit included Housing Benefit, but did not include local Council Tax Support for which residents were required to apply directly to the Council. There was a concern, supported by anecdotal evidence from other councils and reports published on the subject, that following the introduction of Universal Credit there was a risk that there could potentially be a decline in Council Tax Support applications. This was due to the Council Tax Support application becoming an additional and separate process to the Universal Credit application which is made directly to the Department for Work and Pensions (DWP).

The Strategic Director explained that where the decline in Council Tax Support applications was as a result of a genuine reduction in the level of support required, it would have a positive impact to the Council's budget with Council Tax income increasing. However, if the decline was a result of those who would be entitled to support failing to claim, it would result in an increase in Council Tax arrears together with the costs of collection and for Universal Credit claimants an increase in personal debt levels.

Prior to being rolled out in Rotherham in July 2018 only a relatively low number of Rotherham residents were claiming Universal Credit, however the Council Tax Support caseload had significantly decreased by 1,886 from April 2017 to July 2018. In the three months following the roll out, the caseload decreased by a further 541. This fall was impacted by a number of factors including a move of some claimants onto Universal Credit:

- A general change in the economy with more people moving into work and no longer qualifying
- An increase in the state pension credit age resulting in lower numbers of pension age applicants claiming Council Tax Support
- Changes to Rotherham's Council Tax Support scheme which came into effect in April 2018

The report stated that it was difficult to assess accurately the degree to which those on Universal Credit not claiming Council Tax Support had been responsible for the decline in caseload particularly as not all claimants groups were affected prior to roll out. Since December 2015, only a small client group (single job seekers) had been compelled to apply for Universal Credit regardless of where they lived and other household groups in certain areas of Rotherham being introduced in the past six months.

The report went on to detail the actions that the Revenues and Benefits Service had introduced to encourage those potentially entitled to Council Tax Support to apply.

Members sought assurances in respect of the work undertaken to communicate changes to residents. In response, it was explained that there had been a continued trend of a decline in Council Tax Support applicants, which had been the case prior to the introduction of Universal Credit. A number of initiatives were started to maximise take up, which had proved to be fairly successful.

The service had not seen a significant increase in debt recovery as a result of Universal Credit, but it was speculated that it may start to become an issue in twelve months time. The Revenue and Benefits Services were not aware of specific private housing rents issues, but would discuss debit issues and signpost to debt advice services.

In response to a question about the methods used to promote claiming Council Tax Support, it was explained that customers were advised the scheme when recovery notices were issued within four days of instalments being missed. In addition, where mobile phone numbers had been provided, the service sent targeted text messages to customers.

**Resolved:-**

1. That the report be noted.
2. That the information be used to inform future work in respect of the impact of Universal Credit.

**23. MEDIUM TERM FINANCIAL STRATEGY 2018 - 2021**

Consideration was given to a report submitted by the Strategic Director of Finance and Customer Services which shared an interim update to the Council's Medium Term Financial Strategy (MTFS), which set out a framework for understanding the challenges the Council faces and supports corporate planning. It helps the Council to shape its finances over the medium term by examining the projected resources available to meet the s priorities as set out in its Council Plan.

Members noted that the Strategy set out the framework and principles upon which current and future financial projections, over the medium term, will be predicated. The MTFS financial projections were revised and updated alongside the setting of the revenue budget 2018/19 and illustrated budget gaps of £29.7m over the period 2019/20 and 2020/21. The updated budget gaps were re-affirmed in the Financial Outturn 2017/18 report to Cabinet in July 2018 and the financial assumptions underpinning the budget gaps were reviewed again in Summer 2018 with no changes required to key financial assumptions.

Members noted that the financial projections had been reviewed and updated again alongside the development of a two-year budget for 2019/20 and 2020/21 and are incorporated into the MTFS. The details of the budget including outcomes of consultation had been scheduled to be reported to Cabinet and Council in February 2019, when the Budget and Council Tax Report 2019/20 would be considered.

The Strategy provided both national and local context of the challenges faced by councils in delivering services, particularly the demand pressures in respect of adults and children's social care. It set out a clear set of objectives that were intended to support the Council in developing its annual budgets and ensuring financial resilience. Furthermore, it provided details of the risks and uncertainties that were characteristic of local government finances.

Members noted that the Strategy document represented an interim update to the Council's medium term financial plans, which would be further updated following completion of budget consultation and the receipt of further information on the Council's funding from Government to be provided on 6 December 2018 within the Provisional Local Government Finance Settlement for 2018/19.

Members sought clarification in respect of contingency plans if the strategy for the management of the Council's finances could not be realised. In response, the Strategic Director confirmed that the Council would have call on its reserves and take in-year action to balance budgets. The Chair referred to the recent case of Northamptonshire County Council who had been allowed to convert a capital receipt to revenue budget to assist with its financial challenge and queried whether this would be something that the local government sector should lobby central government to introduce for all authorities. In response, the Strategic Director indicated that course of action would not be advocated and would require legislative change.

Members sought assurances that the budgets proposed and the detail of the strategy was controllable. In response, the Strategic Director indicated that she could only be as confident as the information that was presented for analysis from each directorate in respect of every part of the budget, however Members could be reassured that every part of the budget was being challenged and correctly set.

Reference was made to the Healthcheck that had been arranged to take place in February 2019 and Members sought assurances that the budget position and financial strategy would be sufficiently robust to meet the expectations of those assessing the Council prior to intervention ceasing at the end of March 2019. In response, the Strategic Director reflected on all of the actions being taken across the Council and specifically in respect of Children's Services and Adults Services, which had been subject to scrutiny by officers and Members. To this end, there was confidence that the financial strategy was sufficiently robust.

**Resolved:-**

1. That the report be noted.
2. That the Strategy be updated by the Strategic Director of Finance and Customer Services to take account of the funding announcements from central government and address the concerns expressed by Members.

**24. ROTHERHAM TOWN CENTRE MASTERPLAN - FORGE ISLAND AGREEMENTS**

Consideration was given to a report due to be submitted for determination by the Cabinet at its meeting on 17 December 2018, which sought approval of the approach to deliver the Forge Island development through the grant a long lease of the site Muse Developments Ltd and to agree to take a head lease of the development.

It was reported that the proposal from Muse Developments Ltd would allow the Council to consider options at its discretion once the full commercial detail had been agreed. On such a basis, the Council would not be committed to entering into a head lease until it was satisfied with the business case and commercial offer. Based on the information available, it was considered that this would provide a viable and affordable route to deliver a key component of the town centre's regeneration and a Council priority.

Members queried why the Council had not explored the insertion of an exit clause after a number of years. In response, it was explained that such a clause would impact on the financial modelling of the scheme. Advice had been taken from professional bodies and the view was that this was not likely to be viable due to the nature of the market, and that had been reflected in the bids received from potential development partners.

Referring to the plans for increased housing within the town centre, Members sought clarification on how the proposals would support the housing agenda. In response, officers confirmed that various initiatives were designed to encourage housing growth in the town centre. Members reiterated the need to get the sequencing correct so that housing demand is met to encourage further economic growth and leisure activity in the town centre.

**Resolved:-**

1. That the recommendations be supported.
2. That quarterly updates continue to be provided to Overview and Scrutiny Management Board on the Forge Island.

3. That the Cabinet Member for Jobs and the Local Economy provide exception reports to Overview and Scrutiny Management Board in the event of the scheme not progressing to plan.
4. That further assurances be provided to Overview and Scrutiny Management Board that the insertion of a break clause is not feasible prior to entering the lease agreement.
5. That a report be provided to Overview and Scrutiny Management Board on the feasibility of inserting of break clauses for future major projects.

## **25. RIVERSIDE HOUSE CAFE**

Consideration was given to a report which detailed the implementation proposal to achieve a proposed 2019/20 budget saving, by commissioning an external partner to deliver the Riverside House Café provision. It was reported that Riverside House had been open for seven years during which time the café had become an established feature. Soft market testing of the opportunity as a business venture had established interest and it was considered that a commissioned partner could offer a more cost effective solution to opening the café.

Members sought clarification in respect of how the Council could ensure that individuals working within the café would not be disadvantaged through any changes. Officers confirmed that TUPE arrangements would apply and any affected staff would transfer with existing terms and conditions. Noting that the proposal would be subject to a tender process, Members sought to understand what alternative proposals would be considered in the event that the process was not successful.

### **Resolved:-**

1. That Cabinet be advised that the recommendations be supported.
2. That if the tender process is not successful that future proposals be brought back to Overview and Scrutiny for review.
3. That preliminary work be undertaken at the earliest opportunity on alternative options in the event of a tender process not being successful.



**26. RECOMMENDATIONS FROM PRE-DECISION SCRUTINY**

Consideration was given to a paper detailing proposed recommendations from Improving Places Select Commission in respect of two papers due to be submitted to the Cabinet on 17 December 2018 titled 'Improving Air Quality in Rotherham' and 'Immobilisation of Vehicles – Persistent Evaders and Untaxed Vehicles'. The paper also confirmed the recommendations agreed by the Overview and Scrutiny Management Board on 28 November 2018 in respect of a report concerning a Community Energy Switching Scheme which was also due to be considered at the Cabinet meeting on 17 December 2018.

Having considered the information presented by the Chair of the Improving Places Select Commission it was:-

**Resolved:-**

1. That in respect of the report titled 'Improving Air Quality in Rotherham' the following recommendations be made to the Cabinet at its meeting on 17 December 2018:-
  - (a) That Cabinet be advised that the recommendations be supported.
  - (b) That the fleet of vehicles used by RMBC be reviewed to ensure that they meet the required regulations.
  - (c) That, on completion of the consultation, the final business case should make clear those points which have been included arising from the consultation.
  - (d) That the Cabinet Member notify the Overview and Scrutiny Management Board when funding has been received from Government for the initiative.
  - (e) That the Clean Air Zone be kept on the scrutiny work programme.
  - (f) That the outline consultation plan be reported to Improving Places Select Commission
2. That in respect of the report titled 'Immobilisation of Vehicles – Persistent Evaders and Untaxed Vehicles' the following recommendations be made to the Cabinet at its meeting on 17 December 2018:-
  - (a) That Cabinet be advised that the recommendations be supported.
  - (b) That the viability of reducing the number of offences from 6 to 3 be explored.
  - (c) That the introduction of the vehicle immobilisation (clamping) be widely publicised by the Council throughout the borough
  - (d) That an update report be submitted to Overview and Scrutiny Management Board six months after the introduction of the immobilisation initiative.

3. That in respect of the report titled 'Community Energy Switching Scheme' the following recommendations be made to the Cabinet at its meeting on 17 December 2018:-

- (a) That Cabinet be advised that the recommendations be supported.
- (b) That Cabinet be asked to ensure that customer support and service standards are built into the tender framework.
- (c) That the performance of customer support and service standards be reported on a quarterly basis to the Cabinet Member for Jobs and the Local Economy.

## **27. SCRUTINY REVIEW - MODERN METHODS OF CONSTRUCTION**

Consideration was given to a report which presented the findings from the scrutiny review into Modern Methods of Construction. The review was undertaken by a group of members from the Overview and Scrutiny Management Board and the Improving Places Select Commission.

The report detailed a number of recommendations which would be submitted to Cabinet for its consideration and would be reported to Council for information on 23 January 2019.

### **Resolved:-**

1. That the scrutiny review of Modern Methods of Construction be approved for submission to Cabinet.
2. That the Cabinet respond to the recommendations from the review by the end of March 2019.

## **28. URGENT BUSINESS**

The Chair reported that there were no items of business requiring urgent consideration by the Board.

As this was the final meeting of the calendar of the year, the Chair took the opportunity to thank Members and officers for their work in 2018 and wished all a very happy Christmas.

## **29. DATE AND TIME OF NEXT MEETING**

### **Resolved:-**

That the next meeting of the Overview and Scrutiny Management Board be held on Wednesday 16 January 2019 at 11.00 a.m. in Rotherham Town Hall.

## Summary Sheet

### **Name of Committee and Date of Committee Meeting**

Overview and Scrutiny Management Board – 30 January 2019

### **Report Title**

High Needs Finance Update and Budget Sustainability Options

### **Is this a Key Decision and has it been included on the Forward Plan?**

No

### **Report Author(s)**

Jenny Lingrell Assistant Director Commissioning, Performance & Inclusion  
Neil Hardwick Head of Finance CYPS

### **Ward(s) Affected**

Borough-wide

## Summary

This paper summarises the increase in the number of Education and Health Care Plans, the growth in demand for specialist provision and the financial position in 2018/19 of the High Needs Block of the Dedicated Schools Grant (DSG) and the revised cumulative deficit. The recent growth in volume through increased demand for special educational places and the impact on cost is outlined and compared against previous years.

The High Needs Block Recovery Plan aims to bring in-year expenditure in line with the annual budget allocation and focus on a longer term plan which will contribute to reducing the cumulative deficit. (*Appendix 4 – High Needs Block Current Spend & Future Years Projected Spend*)

## Recommendations

- Note the growth in Education and Health Care Plans in Rotherham.
- Note the increased demand for Specialist Education provision.
- Note the actions in place to mitigate and minimise forecast pressure in 2018/19.
- Note the in-year High Needs forecast of expenditure of £4.537m as per September 2018
- Approve option 3 to implement a recovery plan which will enable future budget sustainability.

## Background Papers

SEND Sufficiency Report to Cabinet (February 2018)

## 1. Background

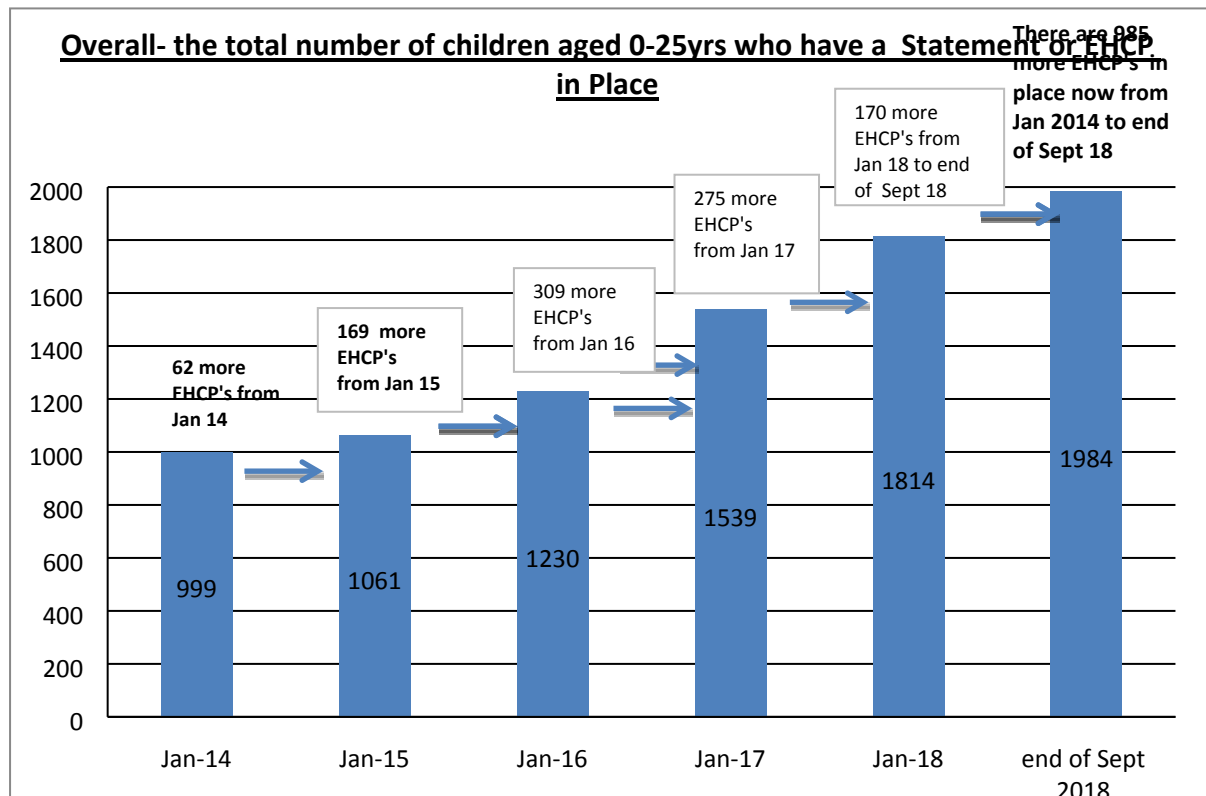
- 1.1 Rotherham faces considerable pressure in continuing to meet the needs of pupils with Special Educational Needs and Disabilities (SEND). There are increasing numbers of pupils with an Education, Health and Care Plan (EHCP) and in-borough special school provision is currently over-subscribed.
- 1.2 Wherever possible children and young people should have their needs met in their chosen mainstream setting, educated alongside their peers within their local community. However for children with more complex needs specialist settings are sometimes more appropriate. Whether they are educated in mainstream schools or through specialist provision, these children and young people have a right to have their educational needs delivered. Funding for specialist education provision is provided from the High Needs Budget – part of the Dedicated Schools Grant (DSG).
- 1.3 The Dedicated Schools Grant is a ring-fenced grant from the Department for Education (DfE) to fund education provision. It is made up of four funding blocks:
  - Schools – Individual mainstream schools and academies.
  - High Needs – funding for the education of pupils with an identified Special Educational Need (SEN) and normally subject to an Education, Health and Care Plan (EHCP). The funding is for pupils from ages 0-25 in a range of provision including special schools, mainstream schools, alternative provision and independent specialist provision. It also contributes to council expenditure for High Needs support services.
  - Early Years – Two Year old Funding; Early Years Funding in Schools and Private, Voluntary and Independent provision (PVI); and local authority retained expenditure for under five year olds.
  - Central School Services – funding for retained duties and on-going responsibilities (former ESG, central licences managed by the ESFA, admissions)
- 1.4 Schools, Early Years Services and Central School Services are delivered within their respective funding block allocation. The High Needs Block in Rotherham is over spending. This position is consistent with the majority of local authorities.
- 1.5 Rotherham is a relatively low funded authority and has seen significant pressures on the High Needs Block for many years. The funding for this block has historically been at less than 10% of the overall DSG (*Appendix 1 – High Needs Budget as a Percentage of Overall DSG*). The High Needs Budget allocation has increased year on year but, partly due to Rotherham's low funding baseline compared to neighbouring boroughs and nationally, the budget uplifts have not been sufficient to match the acceleration in demand and increase in the cost of provision.

- 1.6 During 2017/18 the ESFA required local authorities to undertake a historic spend data DSG block realignment exercise. The High Needs block was realigned after taking account of a £2.9 million transfer from the Schools block in 2016/17 and an additional £3 million transfer in 2017/18. Prior to this exercise Rotherham consistently had a lower High Needs allocation than its statistical neighbours and the transfers helped limit the impact of rising costs associated with the increasing demand for SEND provision in the borough. (*Appendix 2 – High Needs Block Financial Position*).
- 1.7 Under the high needs national funding formula, Rotherham is set to be a gaining authority if/when the formula is implemented in full. Following the realignment exercise the baseline for Rotherham in 2017/18 was £28.5m and the NFF modelling has shown the allocation should rise by 8.8% to £31m. Due to the central government not being able to afford to implement the proposals in full immediately these are being phased in and the maximum uplift in 2018/19 was 3% with a further 3% expected for 2019/20.
- 1.8 During recent years Rotherham has faced growing pressure on the High Needs Budget which has resulted in year on year deficits. In 2015/16 the High Needs in-year deficit was £1.004m; in 2016/17 it was £4.632m (a cumulative deficit of £5.636m); in 2017/18 it was £5.098m (a cumulative deficit of £10.735m) and in 2018/19 it is forecast to be £4.537m (a cumulative deficit of £15.272m)
- 1.9 Over the same three year period the number of children and young people with EHCPs and their predecessor SEN has grown. In 2015/16 (Jan-16) the number of EHCP/SEN was 1,230; in 2016/17 (Jan-17) it was 1,539; in 2017/18 the number rose to 1,958 and at the end of September is 1,984.
- 1.10 In addition to providing education provision for children with SEND the High Needs Block also funds Alternative Provision for those pupils that have been excluded from schools and academies into Pupil Referral Units. The number of pupils in Alternative provision has increase from 146 in January 15 to 191 in May 18.
- 1.11 In 2017/18, 41 children were permanently excluded from secondary school, an increase of 10 from the previous year; of these only 10% had an EHCP. Three children were permanently excluded from primary school during the same period, one of these children had an EHCP.

## **2. Key Issues**

- 2.1 The number of EHCPs or Statement of Educational Need (SEN) in Rotherham is 1,984 as at the end of September 2018. A deficit on the high needs budget has been evident for the last three years in spite of increases to the annual allocation. Over the same period, the number of children and young people with EHCPs has dramatically increased. The high needs budget has increased, through annual uplifts and transfers of funding from the Schools Block, however this has not been sufficient to keep up with demand for specialist and bespoke education places.

Graph 1: Number of Children with EHCP (or SEN)



2.2 In September 2017, The Association of Directors of Children's Services (ADCS) issued a survey to all directors of children's services in order to develop a better understanding of the pressures on High Needs funding. The survey aimed to quantify the financial pressures on High Needs budgets while also identifying the key contextual drivers creating the demand for High Needs funding.

2.3 85 local authorities, from 152 top-tier authorities in England, responded to the survey. 68 local authorities reported an overspend on the High Needs Block budget totalling £140m in 2016/17. Local authorities managed this overspend by:

- Utilising DSG reserves, as a result a number of local authorities reported that their DSG reserves are now either depleted or in deficit.
- Transferring funding from the schools and early years block within the DSG.
- Carrying the High Needs block deficit forward into the current financial year.

2.4 There has been a significant increase in the number of children with SEND who require High Needs support due to:

- The extension of support to young people up to the age of 25 (previously up to age 19) for which local authorities have received no additional funding.
- The needs of children with special educational needs and/or disabilities are becoming more complex and this is driving increased financial pressures across the system.
- There is a shortage of local specialist educational provision to meet need, particularly in relation to ASD and SEMH, and this is resulting in increased specialist placements with independent providers, some of which are located outside of the local area.

- Local authorities are also seeing increased demands for top-up funding across all settings
- 2.5 The DfE have recently provided information for 2010 - 2018 and this shows growth in EHCPs across most age groups, however in terms of provision the number of EHCPs in mainstream education has remained constant with significant growth in special schools, independent providers and further education, *see appendix 3* for details.
- 2.6 The demand in Rotherham is attributed to combination of those factors evidenced through the ADCS survey. Rotherham's High Needs budget allocation has gone up, but at a much slower rate than demand. If spend per child were capped to achieve a balanced budget there would be a risk that we were not performing our statutory duties to meet the needs of children and support them to achieve positive outcomes. Where parents feel that the local area has not responded to assessed need appropriately this can be escalated through a tribunal process, incurring additional costs.
- 2.7 The immediate aim needs to be for a re-basing of the high needs budget and the implementation of the SEND Sufficiency Strategy – Cabinet paper in February 2018 – to create more local cost effective provision to a level that is sustainable over the long term. In addition to the SEND Sufficiency Strategy, a Social Emotional and Mental Health (SEMH) Strategy is in development which will set out partnership actions to prevent needs from escalating and reduce the number of fixed term exclusions.
- 2.8 The council has met demand for SEND placements via the commissioning of places not just in mainstream but in special schools, sixth form provision, alternative provision and independent specialist provision. An increase in pupils needing special school provision and specialist provision in other settings has also led to increase costs. Insufficient places in specialist provision remains an issue in the borough. This has been mitigated to a degree with 135 new special school places being utilised compared to January 2015 and was further addressed through the implementation of the SEND Sufficiency Report, approved by Cabinet in February 18.
- 2.9 Further development of a 19-25 education provision in partnership with Newman Special School has created 15 new places at a new site, The Rotherham, Opportunities College (The ROC) from September 2018 with a further 10 places becoming available from September 2019. The current costs of an Out of Authority (OOA) school placement for post 19 provision ranges from £60,000 to £90,000 per annum, which equates to between £300,000-£450,000 per child if they were in this provision for five years (to 25 years). The proposed funding to meet the same kind of needs is currently set at £25,000 per annum equalling £125,000 over five years.
- 2.10 Continuing development of a specialist residential provision for children and young people with SEND at Rainbows Corner, would see the opportunity to return to Rotherham, up to 5 five young people in Out of Authority residential and education provision, realising efficiencies and costs savings from the Children's Social Care budget and the High Needs Block
- 2.11 The table below shows the educational setting for children and young people with education and health care plans and where there are increases (and pressures) in terms of placements

Table 2: Education Placement Mix – January 2015 to September 2018

	Number of EHCP/SEN Jan-15	EHCPs across settings Jan-15	Number of EHCP/SEN Sept 2018	EHCPs across settings Sep-18
Total	1,061		1984	
Rotherham Mainstream Education	433	40.80%	580	29.23%
Rotherham Special Schools	535	50.40%	683	34.43%
Rotherham - Pupil Referral Units	17	1.60%	87	4.39%
Out of Authority Provision	68	6.40%	236	11.90%
Rotherham Other Provision (P-16 & EOTAS)	8	0.80%	360	18.15%

	EHCP Growth	EHCP growth across	Percentage of additional EHCP places compared to Jan-15
	Jan-15 to Sep-18	Settings %	
Total	923		
Rotherham Mainstream Education	147	15.93%	33.95%
Rotherham Special Schools	148	16.03%	27.66%
Rotherham Pupil Referral Units	70	7.58%	411.76%
Out of Authority Provision	168	18.20%	247.06%
Rotherham Other Provision (P-16 & EOTAS)	352	38.14%	4,400.00%

2.12 In table 2 the areas of cost pressure are clear. All settings have experienced increased demand since 2015. Use of out of authority places has more than doubled.

2.13 The latest high needs budget monitoring for September 2018 is forecasting an in-year overspend of £4.537m. The forecast cumulative deficit at the end of the 2018/19 financial year would be £15.272m (see table 1 for details).

Table 1: Financial Deficit and Rise in EHCPs

Year	In-Year Deficit (£m)	Cumulative Deficit (£m)	No. of EHCP or SEN	Rise in EHCP from previous year
2015/16	1.005	1.005	1,230	169
2016/17	4.631	5.636	1,539	309
	5.098	10.735	1,814	275
2018/19	4.537	15.272	1,984	170

2.14 A breakdown of spend on the High Needs Block is provided in *Appendix 4*. The document provides the 2017/18 outturn, the forecast spend in 2018/19 generating the £4.5m overspend and the estimated spend in 2019/20 and 2020/21 leading to a balanced annual budget.

2.15 The High Needs Fair Funding Formula indicative allocation for Rotherham is due to increase compared to the 2018/19 level, rising to approximately £30.6m by 2019/20. Based on current estimated spending levels of £35m (2019/20 forecast) this would still be £4.4m short of the current funding levels for educating children with identified special educational needs and disabilities.



2.16 The main areas of increased spend are in the following areas:

- Special School Places
- Top Up Funding
- Alternative Provision (PRU's)
- Out of Authority Placements (OoA)

2.17 One of most significant impact on the high needs budget is as shown in table 3.

Table 3: Spend on out of authority placements

Year	OoA Spend £m	Increase £m
2016/17	6.207	1.622
2017/18	7.952	1.745
2018/19	8.450	0.498

2.18 Out of authority placements are a combination of independent specialist provision, residential schools and complex care placements linked to LAC children.

2.19 The complex care placements are joint funded by social care, health and education and are also a significant pressure on the social care and health budgets. The strategy to provide provision for these places locally will not only benefit the High Needs Block but also generate cost reductions for health and social care.

2.20 The strategy over the coming years is to develop sufficient provision in Rotherham as outlined in the SEND Sufficiency Strategy (*see Appendix 5*) and development of more local provision reducing the reliance on out of authority provision to in borough. In doing so the average saving per place is estimated to be £30,000 per annum.

2.21 It is essential that all planning is informed by a robust understanding of current and projected demand and that any placement moves are undertaken in the context of a child's wider care plans.

2.22 The number of children placed out of the authority is 236 (September 2018). The predominant presenting needs are in relation to children diagnosed with Autism spectrum disorder, children with social emotional and mental health needs and children between the ages of 16 and 25. Work is ongoing to address this need through forging creative partnerships with local providers and neighbouring local authorities. This work will enable us to avoid placing additional children out of authority and to move some children back to an educational placement in Rotherham, wherever this is appropriate and will support children to achieve positive outcomes.

2.23 The recovery plan is to reduce by 50 (over the next two years) the number of children currently educated outside of Rotherham in higher cost settings by creating provision in the area, the average full year saving per place would be £30,000.

2.24 An SEMH Strategy for Rotherham is currently being co-produced and will set out a number of partnership activities to address the needs of children with SEMH effectively and reduce demand for higher tier services, including alternative provision. The Strategy will recommend a review of inclusion services to ensure they are value for money, high quality and appropriate to meet demand.

2.25 Additional actions to control expenditure include:

- Utilise all existing placements in the borough
- Review Top Up arrangements
- Final approval through the AD Commissioning and Performance for all additional funding requests
- Strengthen parent and carer knowledge the offer from available and suitable Rotherham provision in the early stages of the Education, Health and Care Plan process to minimise out of authority parental preference.
- To continue to work with schools to maintain pupils in mainstream settings wherever possible.

2.26 The in-year actions described above are all aimed at limiting the anticipated over spend in 2018/19 to £4.5m and if possible to reduce it down. The main financial benefits from the work underway and outlined above will be realised in 2019/20 and 2020/21 financial years.

#### ***Currently out to consultation with schools***

2.27 Transfer 1.5% of the schools block to the high needs block in 2019/20. This would transfer approximately £2.7m into the high needs budget for 2019/20. In 2018/19 0.5% (£0.9m) was transferred to the High Needs block.

#### ***2019/20 and Future Year Actions***

2.28 As already mentioned a minimum transfer of 1.5% in 2019/20 has been requested from the Schools Block and it is the intention to propose, if permissible, a similar request for 2020/21 in order to achieve a balanced high needs budget position going forward.

#### ***Cumulative Deficit Reduction***

2.29 In order to address and start to reduce the cumulative deficit on the high needs budget a greater than 0.5% transfer from the schools DSG block will be necessary. The strategy is to submit a disapplication request of 1.5% in 2019/20 in order to direct £2.7m from the schools block into the high needs allocation. This option is affordable for Rotherham mainstream schools given their relative funding level compared to statistical neighbours. Furthermore it is assessed as a fair deduction given the fact that the Rotherham DSG allocation for mainstream schools is increasing by 2.1% from the 2017-18 baseline due to the new national funding formula.

### **3. Options considered and recommended proposal**

3.1 Option 1: Do nothing – this is not a realistic option given the existing growing pressures on the budget and predicted continued growth in demand.

- 3.2 Option 2: To implement the SEND Sufficiency Strategy and reduce the number of children and young people in out of area by 50 the next 2 years. This would save in the region of £1.5m per annum from 2020/21. In addition pursue the additional actions to control spend as outlined in para 3.25. It would not deal with the existing and future annual financial pressures or address the £15.272m cumulative deficit.
- 3.3 Option 3: As per option 2 with an additional proposal to redirect £2.7m from the Schools Block of the DSG to address the annual financial pressures and reduce the cumulative deficit. With regard to a re-direction of funding from the 2019/20 Schools Block a consultation was issued on 23<sup>rd</sup> October 2018 to all schools with the outcome to be presented to Schools Forum on November 9<sup>th</sup> 2018.

#### **4. Consultation**

- 4.1 Consultation has been ongoing through the Schools Forum and the Finance and High Needs Sub-Groups.
- 4.2 All schools and academies have until 7<sup>th</sup> November to return their school consultation questionnaires, which includes a proposal to redirect £2.7m (1.5%) of funding from the Schools Block to the High Needs Block. The outcomes of the consultation will be presented in a report to Schools Forum on 9<sup>th</sup> November 2018.

#### **5. Timetable for Decision Making**

- 5.1 Consultation regarding any changes and recommendations to inclusion support services will commence in the autumn term.
- 5.2 As outlined above a proposal to transfer 1.5% from the 2019/20 schools block allocation to the high needs block will be consulted on in the autumn and subject to a Schools Forum vote in November 2018.
- 5.3 The deadline for a disapplication request to the Department of Education regarding the transfer of more than 0.5% of the Schools Block to the High Needs Block is the 30<sup>th</sup> November 2018.

#### **6. Financial Implications**

- 6.1 The financial implications are contained within sections 3 and 4.
- 6.2 Finance and Performance monitoring reports for the High Needs Block will be provided to Schools Forum on a period basis. In addition an update on the in-year DSG position is a standing section in the Council's Budget Monitoring Report to Cabinet. Regular finance and progress reports will be submitted to Schools Forum.
- 6.3 In 2019/20 and 2020/21 there is an element of growth factored into the financial projections however if this is exceeded it will negatively impact on the in-year financial forecast.



## Appendix 1 – High Needs Budget as a Percentage of Overall DSG

Dedicated schools grant: 2017-18 allocations local authority summary	2013-14 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA			2014-15 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA			2015-16 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA			2016-17 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA			2017-18 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA			2018-19 DSG allocations prior to deductions for academies recoupment and direct funding of high needs places by ESFA		
	As % of total	2013-14 high needs block allocation (£million)	2013-14 total DSG allocation (£million)	As % of total	2014-15 high needs block allocation (£million)	2014-15 total DSG allocation (£million)	As % of total	2015-16 high needs block allocation (£million)	2015-16 total DSG allocation (£million)	As % of total	2016-17 high needs block allocation (£million)	2016-17 total DSG allocation (£million)	As % of total	2017-18 high needs block allocation (£million)	2017-18 total DSG allocation (£million)	As % of total	2018-19 high needs block allocation (£million)	2018-19 total DSG allocation (£million)
Dudley	12.6%	29.42	234.32	12.7%	29.96	235.28	13.2%	30.79	232.95	13.3%	31.48	235.81	12.6%	30.85	243.94	12.3%	30.79	250.00
St Helens	13.4%	17.06	127.05	13.6%	17.35	127.99	14.2%	18.11	127.14	14.3%	18.35	128.64	13.9%	18.65	134.23	15.4%	21.49	139.89
Tameside	8.1%	13.81	171.09	8.3%	14.42	174.48	8.6%	15.00	173.69	8.4%	14.98	178.07	10.1%	19.03	187.81	9.9%	19.40	195.03
Wigan	10.6%	24.20	227.47	10.9%	25.05	229.10	11.3%	26.00	229.12	11.5%	26.47	230.75	11.3%	27.44	243.34	11.3%	28.20	249.11
Barnsley	11.2%	17.43	155.47	11.3%	17.74	156.50	11.7%	18.60	159.54	11.9%	18.88	159.24	12.4%	21.53	173.09	12.1%	21.86	181.00
Doncaster	12.2%	26.32	215.64	12.3%	26.93	219.56	12.5%	27.84	222.30	12.4%	28.07	226.64	12.3%	28.93	235.12	12.3%	29.73	242.28
Rotherham	9.0%	19.28	213.85	9.3%	20.12	217.04	9.6%	20.86	217.02	9.6%	21.18	220.05	11.3%	25.73	228.45	12.6%	29.52	234.82
Wakefield	9.5%	22.57	237.10	9.7%	23.24	240.32	9.9%	23.85	240.27	10.0%	24.45	245.23	10.5%	27.07	258.28	10.8%	28.76	266.61
Hartlepool	13.2%	9.90	74.85	13.0%	9.85	75.55	14.1%	10.48	74.36	14.2%	10.62	74.69	13.4%	10.59	79.30	13.1%	10.56	80.58
Redcar and Cleveland	13.8%	14.87	107.41	13.7%	14.71	107.43	14.1%	14.95	106.29	14.1%	15.07	106.80	14.3%	16.11	112.38	13.9%	16.01	114.82
North East Lincolnshire	14.3%	15.44	107.78	14.3%	15.63	109.65	13.1%	15.92	121.17	13.5%	16.12	119.22	13.4%	17.11	127.75	13.5%	17.68	130.60
North Lincolnshire	11.8%	13.72	116.18	12.0%	14.09	117.3	12.3%	14.78	119.88	12.2%	14.90	122.47	12.3%	15.56	126.37	12.4%	16.23	130.44
Telford and Wrekin	12.8%	15.53	121.06	12.7%	15.64	122.72	12.7%	16.18	127.64	12.4%	16.45	132.35	14.5%	20.15	139.02	14.6%	21.29	145.76
In-Year Block Transfer		0			1.16			2.94			2.99			3.00				
Revised Rotherham High Needs Budget					21.28			23.8			24.17			28.73			29.52	

Rotherham has consistently had a lower high needs allocation than statistical neighbours.

The impact of this has been exacerbated during the last two years due to the increase in demand for specialist placements, this coming as a direct result of the significant rise in EHCPs.

Plans for developing local provision at a lower cost are progressing and will provide greater choice and varied provision, for SEMH in particular. This will mean that some of the more expensive out of authority costs are avoided in future years.

## Appendix 2-High Needs block Financial Position

2014 to 2020

Year	HNB Allocation (£) (Note 1)	HNB Allocation after deductions (£) (Note 2)	Value of any transfer from Schools Block (£)	Value of any transfer from/to Early Years Block (£)	Final cash value of HNB (£)	Carry Forward Deficit Adjustments	Final High Needs Block	Actual Spend (£) (Note 3)	Over (Under)-spend (£) (Note 4)	Cumulative Deficit in Grant Reserve
(a)	(b)	(c)	(d)	(e)	(f) = (c) + (d) + (e)			(f)	(g) = (f) – (e)	
2014-15	20,549,574	19,272,155	1,158,474	1,009,366	21,439,995	-1,353,666	20,086,329	21,096,544	1,010,215	0
2015-16	20,779,662	19,553,666	2,943,992	434,626	22,932,284	-1,010,215	21,922,069	22,926,764	1,004,695	0
2016-17	21,222,736	18,190,107	2,989,864		21,179,971	-1,004,695	20,175,276	25,811,728	5,636,452	5,636,452
2017-18	25,729,600	20,850,941	3,000,000		23,850,941		23,850,941	28,949,263	5,098,322	10,734,774
2018-19	29,636,890	23,639,391	936,823		24,576,214		24,576,214	29,113,066	4,536,852	15,271,626
2019-20*	30,596,913	24,599,414	2,700,000		27,299,414		27,299,414	29,000,000	1,700,586	tbc

*Note 1: the figure published by DfE*

*Note 2: the figure after deductions for academies, import/export deductions etc.*

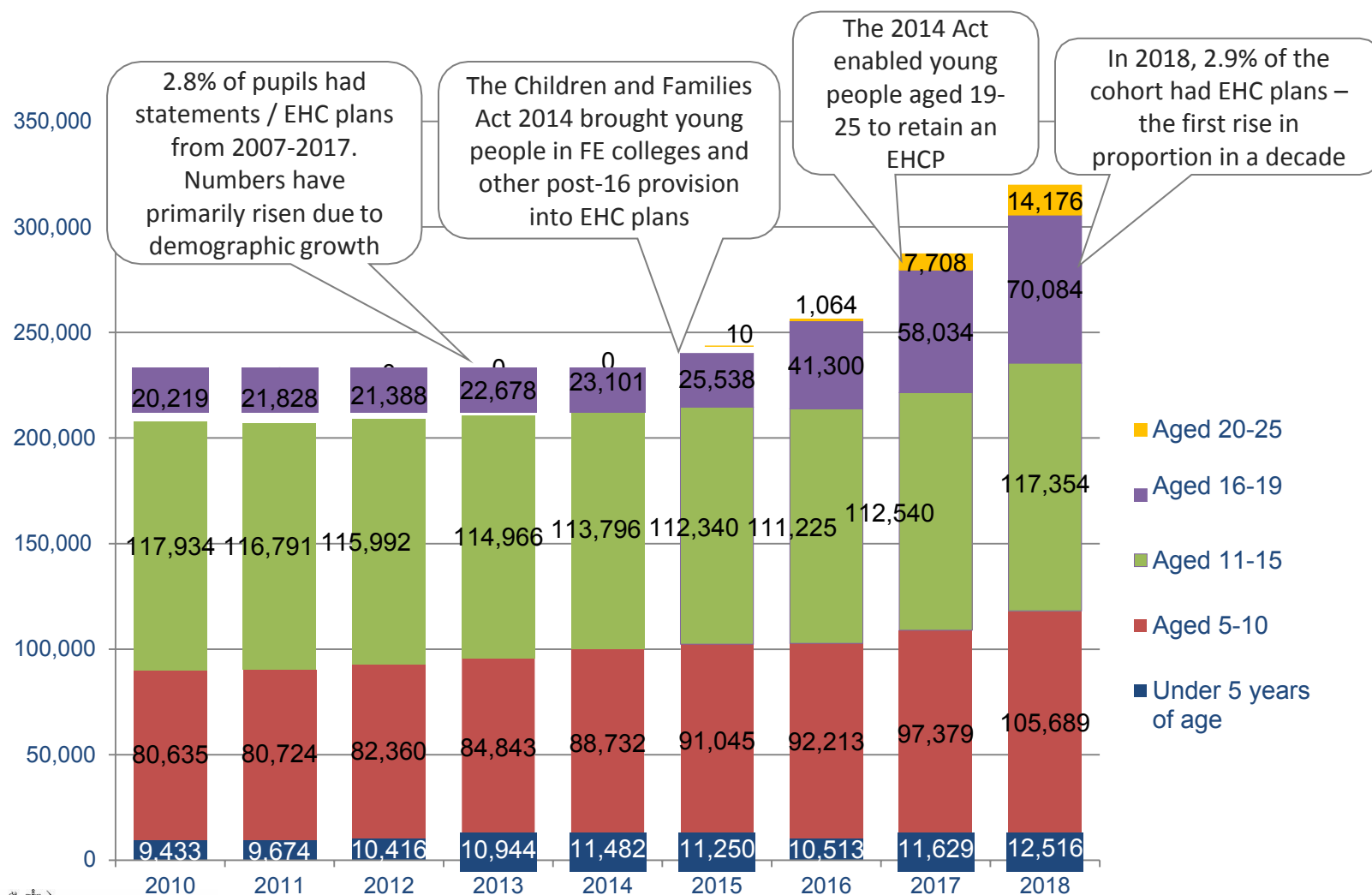
*Note 3: forecasted spend for 2018-19 and 2019-20*

*Note 4. In year over/(under) spend*

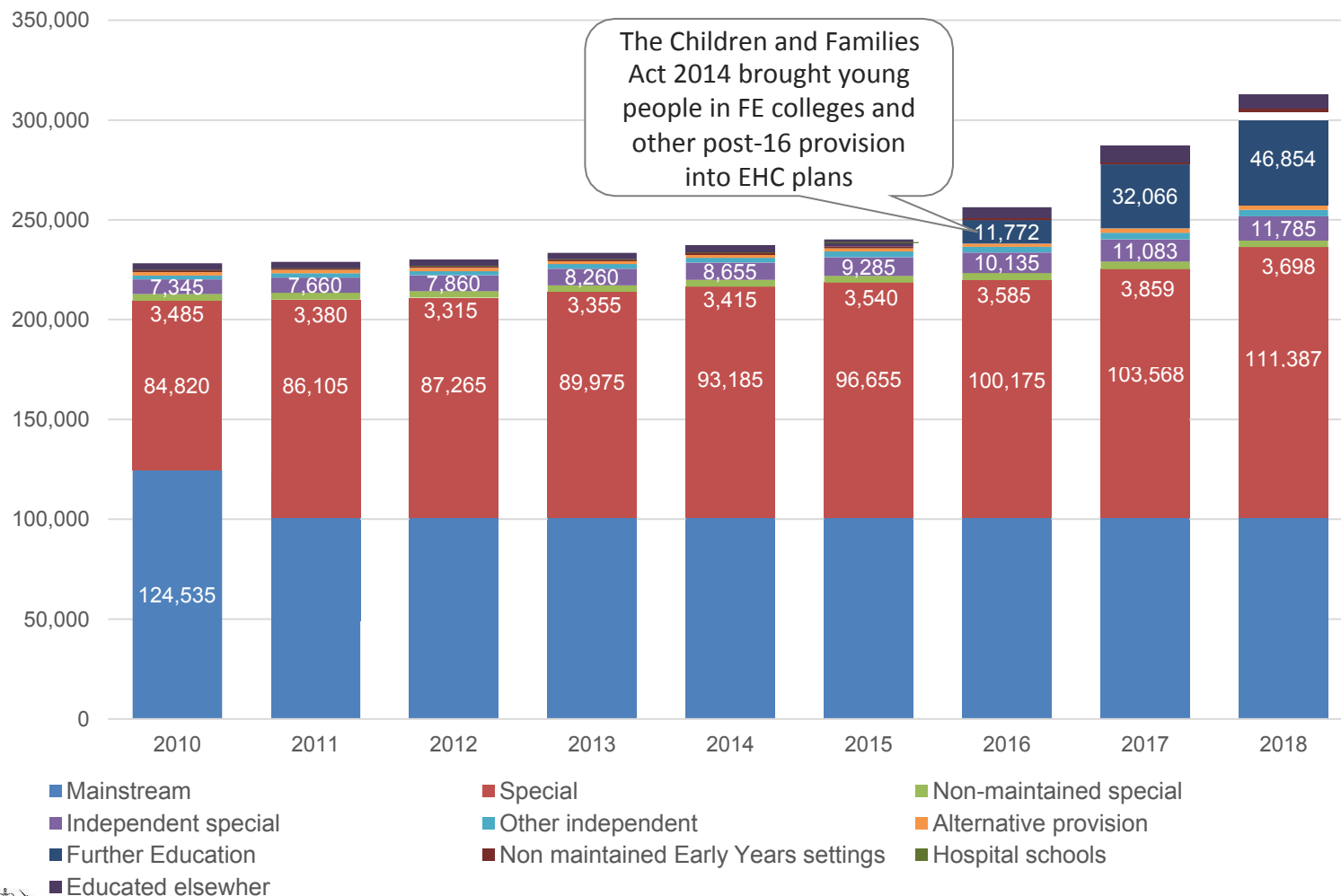
*\* 2019-20 is based on Provisional NFF high needs funding in 2019-20 & requested 1.5% transfer*

*\*2019-20 Forecast cumulative deficit position £16,972,213*

# The local offer – growing numbers



# The local offer – changing placements





## Appendix 4

Additional Places 35 45 58 138

**High Needs MTFS**

	Outturn 2017/18 £ '000	Forecast 2018/19 £ '000	Indicative 2019/20 £ '000	Indicative 2020/21 £ '000
<b><u>Area</u></b>				
Special Schools	12,758	13,338	14,463	15,913
Primary Resource Units	163	103	103	103
Secondary Resource Units	283	235	235	235
Top up Funding - mainstream	2,402	3,056	3,056	3,056
Top up funding Post 16	1,240	1,182	1,182	1,200
Alternative Provision	3,567	4,261	4,261	4,261
Out of Authority Placements	7,952	8,450	7,299	5,131
Inclusion Services	2,903	2,589	2,339	2,339
Other Education Services	1,183	761	1,000	1,000
CCP & FE places	1,070	1062	1,062	1,062
<b>Total Expenditure</b>	<b>33,521</b>	<b>35,037</b>	<b>35,000</b>	<b>34,300</b>
<b>Funding Baseline</b>	28,423	29,600	30,600	31,600
Disapplication Funds		900	2,700	2,700
<b>Annual Overspend</b>	<b>5,098</b>	<b>4,537</b>	<b>1,700</b>	<b>0</b>
Cumulative Deficit b/f	5,637	10,735	15,272	16,972
<b>Cumulative Deficit</b>	<b>10,735</b>	<b>15,272</b>	<b>16,972</b>	<b>16,972</b>



## **Summary Sheet**

### **Name of Committee and Date of Committee Meeting**

Overview and Scrutiny Management Board – 30 January 2019

### **Report Title**

Review of the Town Centre Public Space Protection Order

### **Is this a Key Decision and has it been included on the Forward Plan?**

No

### **Strategic Director Approving Submission of the Report**

Paul Woodcock, Acting Strategic Director of Regeneration and Environment

### **Report Author**

Sam Barstow, Head of Community Safety, Resilience and Emergency Planning  
sam.barstow@rotherham.gov.uk

### **Ward(s) Affected**

Boston Castle

## **Summary**

This report provides a detailed review of the implementation of the Public Space Protection Order in Rotherham Town Centre and Clifton Park.

## **Recommendations**

1. That Overview and Scrutiny Management Board note the content of the report.

## **List of Appendices Included**

1 - A

## **Background Papers**

No

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

## **Council Approval Required**

No

**Exempt from the Press and Public**

No

## **Review of the Town Centre Public Space Protection Order**

### **1. Background**

- 1.1 Powers introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 created the provision for local authorities to implement Public Space Protection Orders (PSPO). These orders are designed to address anti-social behaviour in local areas and are therefore adaptable to meet local needs. Prohibitions or requirements can be made at a local level in response to complaints from a range of sources including the public, businesses and Councillors. Any breach of a prohibition or requirement, contained within a PSPO, becomes a criminal offence and offenders are liable to a Fixed Penalty Notice or prosecution through the Magistrates court.

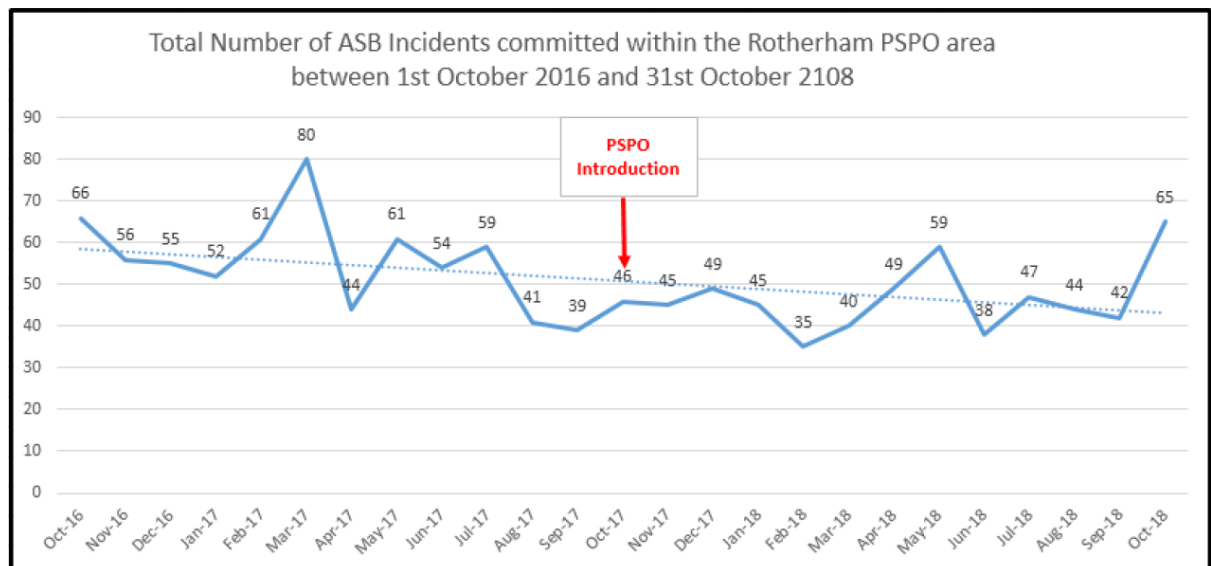
### **2. Introduction**

- 2.1 Following analysis, consultation with partners and the public, and the approval by Cabinet at its meeting on the 11th September 2017, a PSPO was introduced in Rotherham town centre and Clifton Park in October 2017. Prior to Cabinet's decision, the PSPO was considered by the Overview and Scrutiny Management Board (OSMB). Whilst receiving support, members of OSMB recommended that the PSPO be reviewed following a year of operation to consider its impact. Further recommendations made by OSMB were as follows;
- The introduction of a condition relating to nuisance vehicle use;
  - The introduction of a code of practice for officers.
- 2.2 Public Space Protection Orders are made for three years. The Council is able to vary or remove the order at any time during the three years, but must follow due process. Following a period of three years, the full process must once again be followed, in order to consider the making of a further order.
- 2.3 In response to the recommendations, the Council's Cabinet Member for Waste, Roads and Community Safety agreed the recommendation in relation to a code of practice and committed to review the potential inclusion of a condition relating to nuisance vehicles in six months-time.
- 2.4 The code of practice was developed and issued to officers, alongside detailed training. This can be found attached as appendix A.
- 2.5 Nuisance vehicle use referred to nuisance often associated with vehicles parked and individuals gathering, at times causing litter and noise. Following further review in July 2018, it was noted that there had been limited incidents during the previous year and throughout January and February of 2018 there had been no reports. Following discussion with Cabinet members, it was agreed that reports would be monitored for any future spikes in incidents but that no further action was required at that stage.

- 2.6 Alongside the above, the Strategic Director for Regeneration and Environment agreed, following extensive consultation and engagement with dog walkers groups at Clifton Park, to review the condition relating to dogs. The Council agreed, in Clifton Park only, to assess any impacts and to ensure lawful and responsible dog owners were not inadvertently penalised. Again, in July 2018 officers reported to Cabinet members that there had not at that stage been cause to use the powers within Clifton Park and that no further complaints had been received from Dog Walking groups. No further process to consider change to the PSPO was therefore recommended as a result of further consideration of both aspects referred to above.

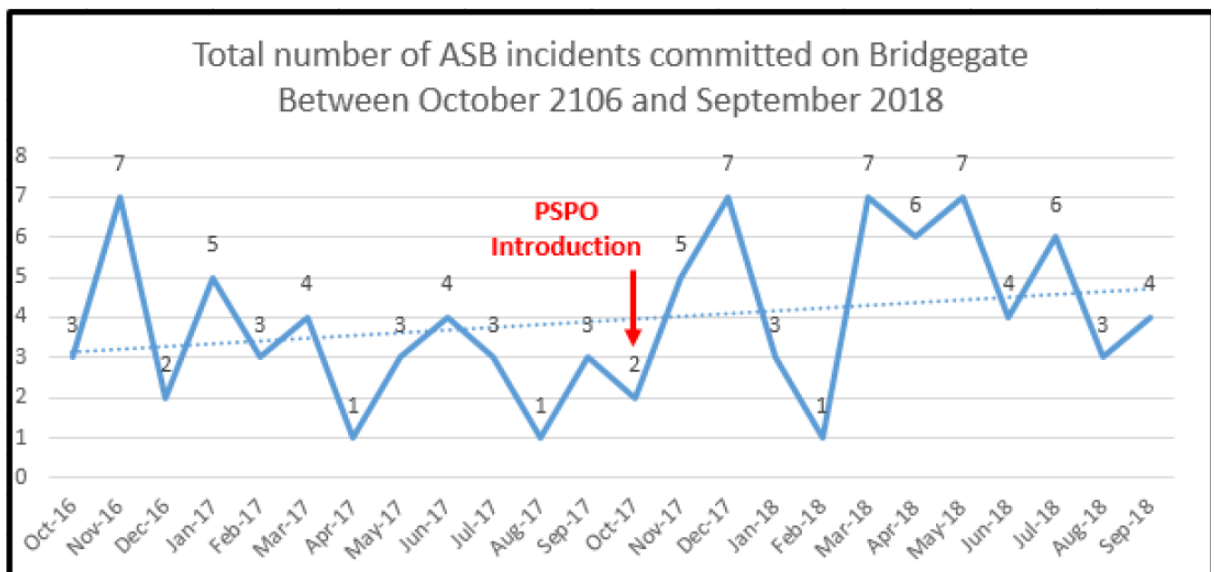
### 3. Analysis

- 3.1 In order to assess the effectiveness of the PSPO, analysts have reviewed incidents during the year prior to implementation (Oct 2016 to Oct 2017) and during the year following implementation (Oct 2017 to Oct 2018). The graph below demonstrates monthly incidents and the general direction of travel:



- 3.2 It is encouraging to note that incidents continue to reduce, though this is potentially a continuation of previous patterns. There were 539 incidents of Anti-Social Behaviour (ASB) in the year after implementation of the PSPO, averaging 45 incidents per month. This is compared to the 668 ASB incidents reported prior to PSPO implementation, averaging at 56 incidents. This shows an average reduction of 11 incidents per month, around 19%. The graph does however show a spike in incidents in October 2018, where numbers returned to those recorded in October 2016. This will need further analysis to understand the cause but it may be linked with the commencement of dark nights. The spike in April/May 2018 could be attributed to Rotherham United Football Club playing extra games, being promoted, and the celebrations that followed, coupled with the advent of the World Cup and the exceptionally warm weather that was experienced.

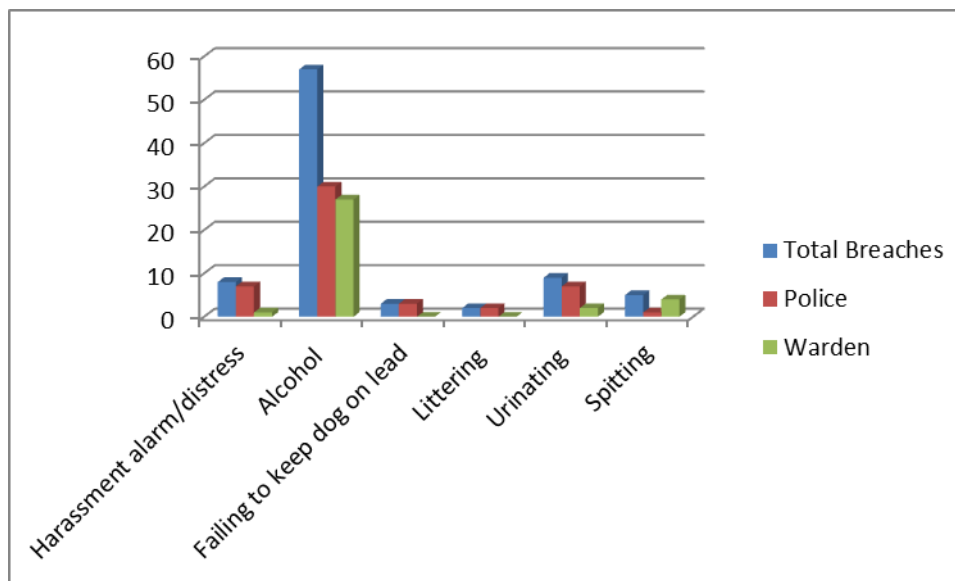
- 3.3 The majority of ASB in the PSPO area is classified as “rowdy / Inconsiderate behaviour”. Since the implementation of the PSPO, levels of this type of ASB have reduced to an average of 22 incidents per month, compared to 28 prior to the PSPO. Notably, street drinking has also seen a small reduction. Incidents reported as “Concern” have seen a noticeable increase, from less than 0.50 reports per month to nearly 2.25 reports. Other key types of ASB where there has been a change are “Disturbance/Fighting”, “Begging” and “Vagrancy and Threatening Behaviour”. These have seen either a very slight rise or a noticeable rise. Key times for ASB in the PSPO area are between 13:00 and 00:01hrs on Tuesdays, Fridays and Saturdays. Times of “Concern” reports are generally between 23.00 and 03.00 on Fridays, Saturdays and Sundays. This indicates a link to the night-time economy and, anecdotally, is linked to the time that patrons begin to arrive at licenced premises and the time that premises close. The “Nuisance Vehicles” category of reporting also continues to reduce, dropping from on average 5 incidents per month to less than 2 incidents.
- 3.4 Key locations for ASB, identified through hot-spot area mapping, are Bridgegate, Forge Island and locale and the Clifton Park area. These locations are representative, to some extent, of previous hotspots however: incidents at Clifton park have remained generally consistent; incidents at the interchange have reduced; incidents around Bridgegate have increased significantly (see graph below); and incidents at Forge Island have increased, likely shifted from the Interchange location.



- 3.5 Overall the analysis shows there has been a reduction in the average number of ASB incidents per month since the implementation of the PSPO. However, volumes were on a reducing trend since the start of the data period (October 2016) and therefore the full impact of the PSPO is not as clear-cut as it appears, as the trend towards reduction had already commenced.

## 4. Enforcement

- 4.1 Enforcement data up to the end of September 2018 shows a total of 85 breaches of the Public Space Protection Order. All dealt with on the spot through a fixed penalty notice, 10 of which have been paid. 69 of these tickets have resulted in (or are waiting) prosecution. 50 of the tickets were issued by South Yorkshire Police and 35 by Council Wardens.
- 4.2 The following chart details the breakdown of offence type and the issuing agency;

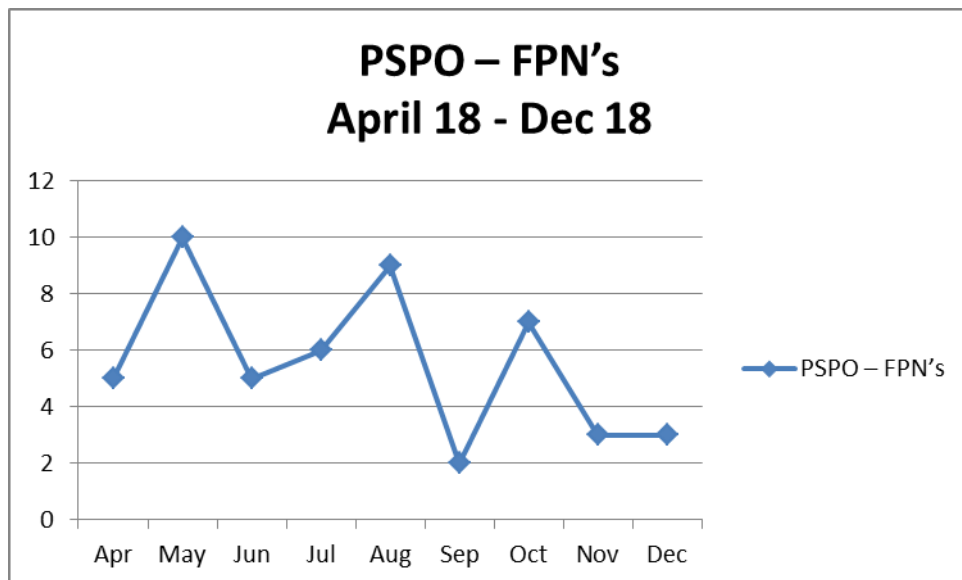


- 4.3 As can be noted, alcohol breaches account for a significant proportion of all breaches (67%), with harassment/alarm and distress accounting for 9% and urinating accounting for 10%. There are seven repeat offenders accounting for 25 of the 85 offences (29%). Of the 25 all are subject to further enforcement, with a number currently imprisoned, others out of areas and one made subject to a Criminal Behaviour Order (CBO).

## 5. Officer Feedback

- 5.1 In order to support implementation, a joint training package was rolled out to all officers working in the area, from both the Council and South Yorkshire Police. This training has clearly supported a level of enforcement which has remained fairly consistently and evenly split across the agencies. The chart below shows FPNs issued by month from April to Dec 18. Of note the peaks mirror peaks in ASB reports as shown in sec 4.1:





- 5.2 Officers are generally positive in relation to the additional powers that the PSPO grants them. They allows officers to positively deal with lower level offences. Furthermore, effective use of the PSPO has supported the identification of repeat offenders, allowing officers to focus additional enforcement activity against the individuals causing the highest demand. Critically in addition, it has allowed the identification of support needs and referral to appropriate agencies.
- 5.3 Wider feedback, from Elected Members, management, businesses and others, suggests that further enforcement resources are required in order to have a more significant impact in the town centre area. It should be noted however that this feedback is in light of falling reports of ASB, which may in part be due to lack of confidence in reporting but may also support a general gap between perception and reality in respect of community safety issues, in light of the continued reduction.

## 6. Summary

- 6.1 Whilst it is encouraging that incidents in the PSPO are continue to decrease, further attention is required in the areas identified as 'hot spots'. Further monitoring and swift enforcement against repeat offenders is also required, to prevent escalation to nine breaches of the PSPO, as in the case of the individual referenced within this report.
- 6.2 The allocation of resources continues to be challenging and this pressure is likely to increase in the short term. This will challenge officers in respect of maintaining enforcement levels and may see short term reductions in enforcement activities. As a result of this pressure officers should consider the potential use of sporadic, targeted, operations, drawing resource from other areas and focussing on problem times or problem areas.
- 6.3 Officers see no reason to suggest adjustment of the Public Space Protection Order at this stage and recommend that a further formal review is undertaken during the summer of 2020, prior to the order lapsing in October 2020.

## **7. Key Issues**

- 7.1 Resources continue to present a challenge in terms of enforcement and visibility of implementation.
- 7.2 Reductions in ASB continue but these may not be directly attributable to the PSPO.

## **8. Recommendations**

- 8.1 That Overview and Scrutiny Management Board note the report.

## **9. Financial and Procurement Implications**

- 9.1 This report does not present any decisions and there are no financial or procurement implications.

## **10. Legal Implications**

- 10.1 This report does not present any decisions and there are no legal implications.

## **11. Implications for Children and Young People and Vulnerable Adults**

- 11.1 None of the enforcement activity has been utilised against young people, where a proportionate approach would be taken.

## **12. Equalities and Human Rights Implications**

- 12.1 None of the information reviewed or analysis conducted suggested an adverse impact on any protected characteristic.

## **13. Implications for Partners and Other Directorates**

- 13.1 Clearly this report concerns South Yorkshire Police and Town Centre partners, including businesses. Consultation has taken place with the Police and also within the Town Centre Task and Finish Group.

## **14. Risks and Mitigation**

- 14.1 As identified within the body of the report, there are no additional risks identified as a result of this report.

## **15. Accountable Officer(s)**

Sam Barstow, Head of Community Safety, Resilience and Emergency Planning  
Tom Smith, Assistant Director, Community Safety and Street Scene

**Regulation and Enforcement:**

**Code of Conduct: Public Expectations**

Officers undertaking regulatory and enforcement functions for, or on behalf of the Council, are subject to the provisions of the statutory General Enforcement Policy which describes expectations of officers when delivering regulatory and enforcement actions. There are a few roles that are exempted from the General Enforcement Policy, however all officers are subject to the Council's Corporate Code of Conduct.

This Code of Conduct details what members of the public should expect from officers, whether requesting or being subject to, regulatory and enforcement actions.

1. Officer behaviour, including communications in all forms, influences perceptions of the Council and consequently can generate complaints against the Council which are investigated with full disclosure.
2. Officers will:
  - a. Be professionally
  - b. Be polite
  - c. Be honest
  - d. Identify themselves with an identification card, either detailing their name and role, or their officer number
  - e. Where uniformed they will display the appropriate branding and uniform at all times while on duty and not seek to carry out work in a way that could be deemed to be undercover, unless authorisation is provided by managers for specific operations.
  - f. Where non-uniformed officers should make it clear to individuals and business who they are and what their role is.
3. Officers will exercise all enforcement and regulatory activities in a way which is:
  - a. Proportionate – activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
  - b. Accountable – activities, including internal electronic communications, will be open to public scrutiny whether as part of disclosure or freedom of information. Officers need to understand and be conscious of the relevant policies and the complaints procedures.
  - c. Consistent – advice to those enforced against and regulated will be robust, reliable and where advice is provided by others it will be respected. Where circumstances are similar, a consistent, if possible, approach and actions to other Councils will be followed.

- d. Transparent – those regulated will be advised appropriately so as to understand what is expected of them and what they can anticipate in return.
  - e. Targeted – resources will be focused on higher risk enterprises and activities, reflecting local and national priorities.
  - f. Openness – enforcement and regulatory activities will be undertaken in an open way unless this would defeat the objective of enforcement.
  - g. Professional – enforcement and regulatory activities will always be undertaken in a professional and polite manner. Whilst work is confrontational, officers need to ensure that a professional and polite, albeit when needed firm, manner is maintained.
  - h. Perception – officers should not behave in a manner that might be construed as bringing the Council into disrepute. This would include breaching legal and policy requirements. As an example, there are Corporate policies and procedures dealing with surveillance that have to be adhered to; where individuals or businesses are subject to surveillance without due authorisation, which might include following individuals or observing individuals, this can damage the Council's reputation and result in litigation.
4. Where formal enforcement action is necessary, the most appropriate course of action will be considered from the range of sanctions and penalties available, with the intention of:
- a. Aiming to secure public safety
  - b. Aiming to change the behaviour of the offender
  - c. Aiming to eliminate any financial gain or benefit from non-compliance
  - d. Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
  - e. Being proportionate to the nature of the offence and harm caused
  - f. Aiming to restore the harm caused by non-compliance
  - g. Aiming to deter future non-compliance.
5. Before formal enforcement action is taken:
- a. Where appropriate there will be an opportunity to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction of evidence or there is an imminent risk to the environment or health and safety.
  - b. Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time, if possible, and confirmed in writing within 10 working days.

- c. Where there are rights of appeal, or routes to make representation, against formal enforcement action, notification of the mechanism to do so will be clearly set out in writing at the time the action is taken.
  - d. Clear reasons will be given for any formal enforcement action taken and confirmed in writing.
6. Where members of the public are concerned that officers working for, or on behalf of the Council, have not adhered to this Code of Practice, they have recourse to formally complain to the Council within the provisions of the Council's Corporate Complaints Policy. In writing to:

The Complaints Manager  
Rotherham Metropolitan Borough Council  
(FREEPOST RTCT-XKLS-ZHAZ)  
Riverside House  
Main Street  
Rotherham  
S60 1AE

Email: [complaints@rotherham.gov.uk](mailto:complaints@rotherham.gov.uk)  
Telephone: (01709) 382 121

## **Summary Sheet**

### **Name of Committee and Date of Committee Meeting**

Overview and Scrutiny Management Board – 30 January 2019

### **Report Title**

Proposed Public Space Protection Order – Fitzwilliam Road, Rotherham East

### **Is this a Key Decision and has it been included on the Forward Plan?**

No

### **Strategic Director Approving Submission of the Report**

Paul Woodcock, Acting Strategic Director of Regeneration and Environment

### **Report Author**

Sam Barstow, Head of Community Safety, Resilience and Emergency Planning  
sam.barstow@rotherham.gov.uk

### **Ward(s) Affected**

Rotherham East

## **Summary**

This report introduces a potential Public Space Protection Order for the area surrounding Fitzwilliam Road, within Rotherham East, as a part of the Eastwood Deal, adopted in November 2017. This report furthermore details the evidence available to support potential implementation, alongside a proposed process to meet the legal requirement in relation to due process, including statutory consultation.

## **Recommendations**

1. That Overview and Scrutiny Management Board consider the proposed Public Space Protection Order.
2. That Overview and Scrutiny Management provide comment on the proposed conditions and area to be covered.

### **List of Appendices Included**

None

### **Background Papers**

No

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

No

**Exempt from the Press and Public**

No

## **Proposed Public Space Protection Order – Fitzwilliam Road, Rotherham East**

### **1. Background**

- 1.1 Powers introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 created the provision for local authorities to implement Public Space Protection Orders (PSPO). These orders are designed to address anti-social behaviour in local areas and are therefore adaptable to meet local need. This means that prohibitions or requirements can be made at a local level in response to complaints from a range of sources including the public, business and Councillors. Breach of a prohibition, or requirement contained within a PSPO, becomes a criminal offence and offenders are liable to a fixed penalty notice or prosecution through the Magistrates court.

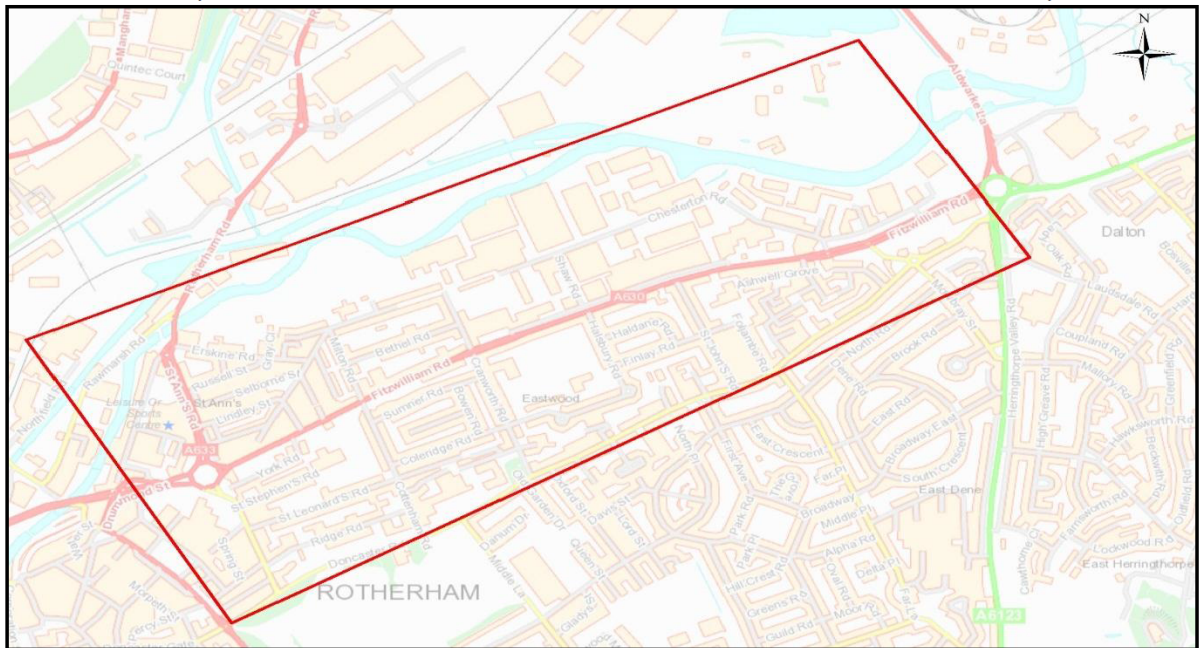
### **2. Introduction**

- 2.1 The current version of the Eastwood Deal has been in effect since November 2018 and is attached as appendix A. One of the clear objectives within the deal relates to effective response to Anti-Social Behaviour (ASB) and Crime, alongside an objective around providing an effective response to Environmental issues. Under these two objective areas, officers and local elected members, supported and led by the Cabinet member for Waste, Roads and Community Safety, have discussed the potential for a PSPO within the Eastwood area to address the current concerns in the area.
- 2.2 Following the discussions referenced above, officers were tasked with exploring the potential for an order and the prohibitions or requirements that may be considered as a part of the order. This resulted in a report being produced for consideration, attached as appendix B.
- 2.3 The report proposes the following areas as a result of reports, anecdotal information, public and officer feedback alongside personal experience of the area;
- Restrictions on alcohol
  - Restriction on use of foul and abusive language
  - Vehicle nuisance
  - Requirements around maintaining gardens in a condition that does not impact on the quality of life of those in the locality
  - Restricted access to open spaces/ groups of people at certain times (Eldon Rd fields, Pocket Park)
  - On-street noise that is likely to cause a disturbance
  - Excessive Noise emanating from properties
  - Requirement for business to maintain a tidy curtilage

### **3. General Evidence**

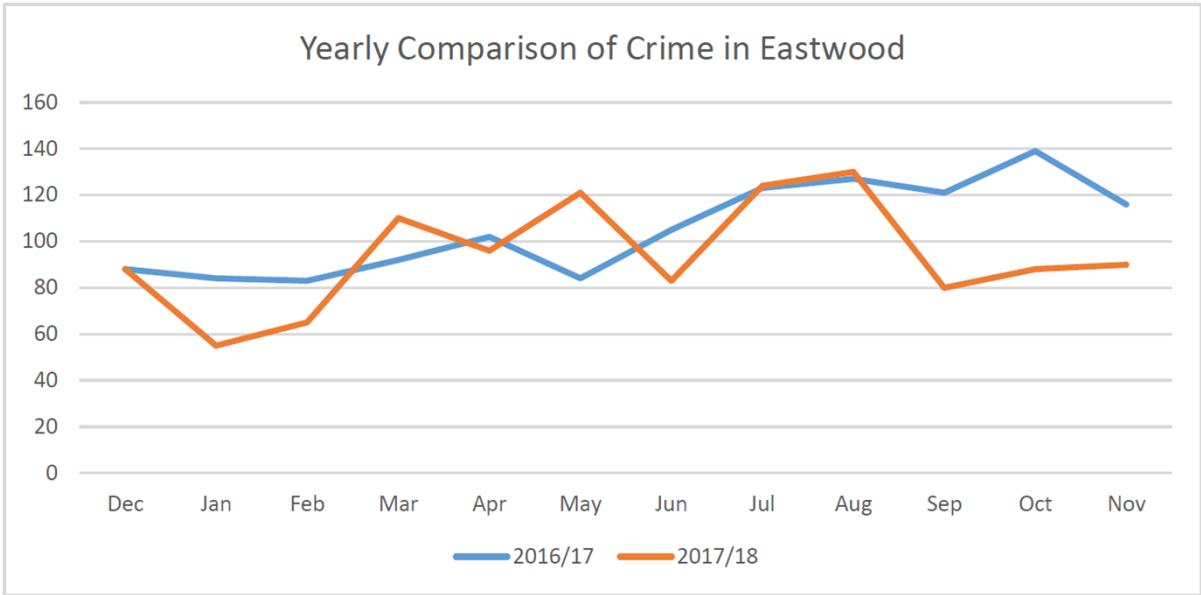
- 3.1 In general, crime has been decreasing in the Eastwood area, which is defined by the following map;





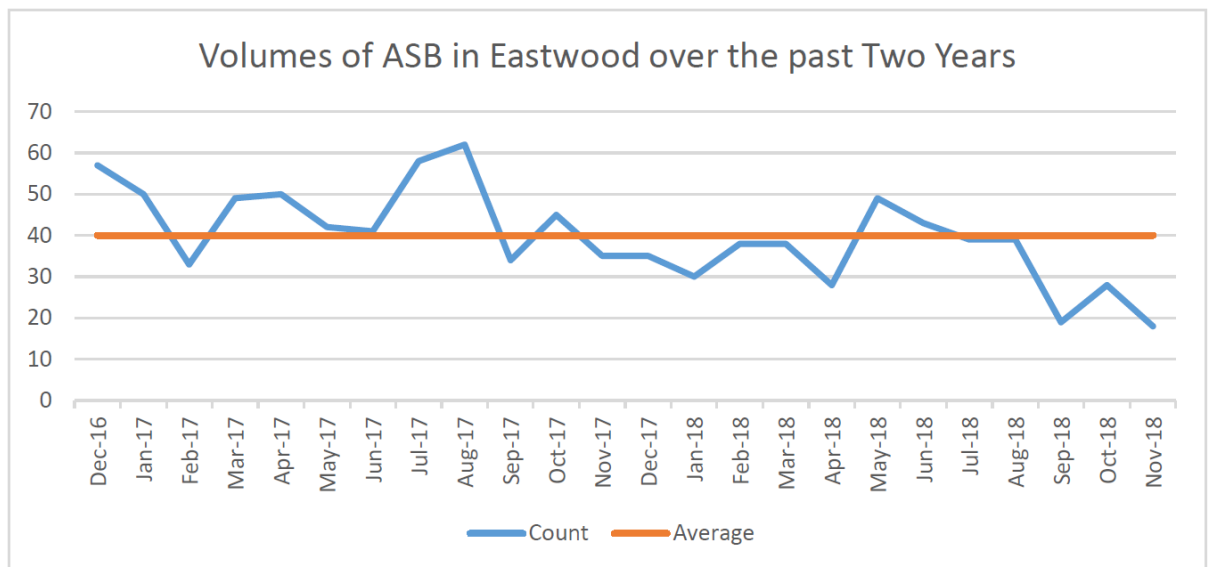
This area was utilised in order to ensure any concerns in relation to displacement were properly considered and additionally, to allow a sensible boundary to be developed.

Within this area, reported crime has steadily decreased this year, compared to last, as shown by the chart below, with the orange line indicating the current year.

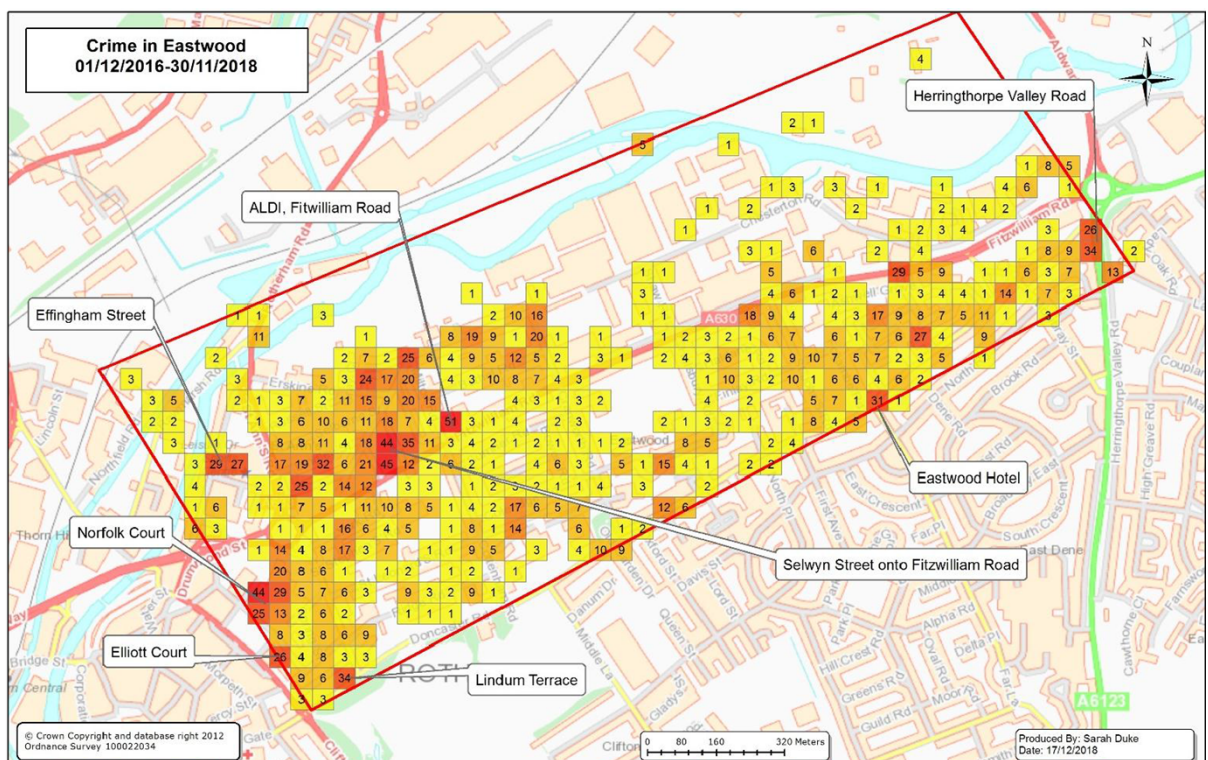


Alongside the reduction in crime, there has also been a reduction in the level of intelligence submitted however the detail cannot be disclosed due to the sensitivity of the information.

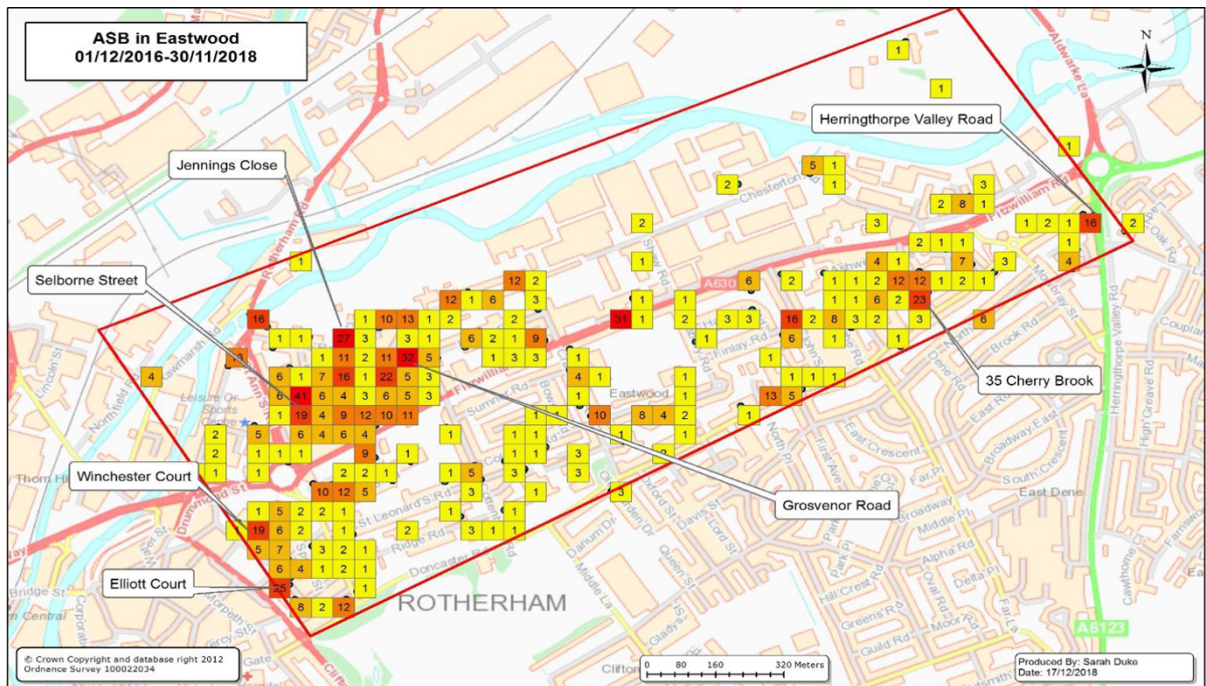
- 3.2 In relation to Anti-Social Behaviour (ASB) again the picture is generally positive, as illustrated by the chart below. The orange line shows the monthly average and, as can be noted, recently a number of months have come in below this average.



- 3.3 There are clear hotspot areas for both crime and ASB and they are relatively consistent, as follows;







3.4 Whilst the above maps clearly demonstrate hotspot areas within the area known as Eastwood Village, the peaks in areas outside of the Village demonstrate a real risk of displacement of issues.

#### 4. Condition Specific Evidence

##### 4.1 Restrictions on alcohol

In relation to alcohol use, specific searches were conducted and the findings analysed. Evidence from Police systems to support this condition is limited as officers are not required to enter aggravating information, such as intoxication, to ASB incidents. In relation to crime, 35 of the crimes committed in the current year had alcohol flagged. 12 ASB incidents were similarly flagged with an alcohol marker. This represents a small percentage of the overall levels.

Also relevant to this category however are ASB incidents linked to rowdy/inconsiderate behaviour. Such incidents can often involve intoxication, though clearly not exclusively. 39% of the recorded ASB was categorised as rowdy/inconsiderate behaviour, which represents a significant proportion.

Finally, in a recent survey conducted in October in the Eastwood area, which received 56 responses, 3 respondents mentioned phrases relating to alcohol being a problem in the area.

##### 4.2 Restriction on use of foul and abusive language

Again, rowdy and inconsiderate behaviour suggests links to foul or abusive language. Beyond this data, there is no specific crime or incident category that would capture this information. Anecdotal feedback does consistently suggest this as a problem in the area and this has been witnessed by officers. Many of the responses to the survey, referenced above, mention noise in the evening, shouting and fighting but not specifically reference foul and abusive language.

#### 4.3 Vehicle Nuisance

There were 91 incidents relating to vehicle nuisance in the area. This is significantly higher than other area close by such as the town centre, which recorded two a month on average in comparison to 7.5 in Eastwood. This issue is also backed up by the survey, again referenced above, where several young people referenced the issue. Anecdotal feedback suggests that this is linked to speeding as opposed to nuisance when stationary and this would need to be further explored through the consultation to ensure any conditions would be framed to correctly address the behaviour causing concern.

#### 4.4 Requirement to maintain gardens in a condition so as not to impact on the quality of life in the local area

Whilst many areas of ASB have seen a decrease, untidy garden has steadily increased by around 9% in this area over the previous four years, as can be seen from the table below;

	2014/15	2015/16	2016/17	2017/18	4 year change
Eastwood Village	129	109	138	141	9%

Additional enforcement work targeted in this area during June and July 2018 identified an additional 82 accumulations in gardens to be addressed through statutory powers. There is a potential preventative benefit which could be achieved through use of a PSPO.

#### 4.5 Restricted access to open spaces/ groups of people at certain times (Eldon Rd fields, Pocket Park)

As can be seen from both the ASB and Crime maps, there are clearly hot spots around Eldon Road playing fields and the Pocket Park, situated on Selbourne Street. Intelligence and anecdotal information would suggest these areas are frequently used for consumption of drugs. Drugs intelligence accounts for a large proportion of the intelligence submitted (78%). Whilst it cannot be directly addressed through use of a PSPO, a PSPO could seek to target harden areas commonly used in public by way of restrictions in terms of access. This is inherently challenging to Police and may already be available where required through increase in use of dispersal powers but again; this is subject to resource availability.

#### 4.6 On-street noise that is likely to cause a disturbance

Within the analysis of Police incidents, ten hotspot streets were identified which accounted for 453 incidents. All of these referenced noise and rowdy/inconsiderate behaviour as significant categories accounting for the high demand. At the same time, Council data in relation to noise from properties suggests a reduction over the previous four years of 24%. This potentially suggests that the sources of the noise are on the street.

#### 4.7 Requirement for business to maintain a tidy curtilage

A number of visits to the area by a range of officers and Councillors have noticed build ups of waste, often around businesses within the area. One such business is subject to a Community Protection Notice as a result of these issues. Again there is no specific category for reporting so hard data is difficult to come by. The Council has however needed to increase resource in this area to maintain it in a clean and tidy condition.

### 5. Recommended Conditions

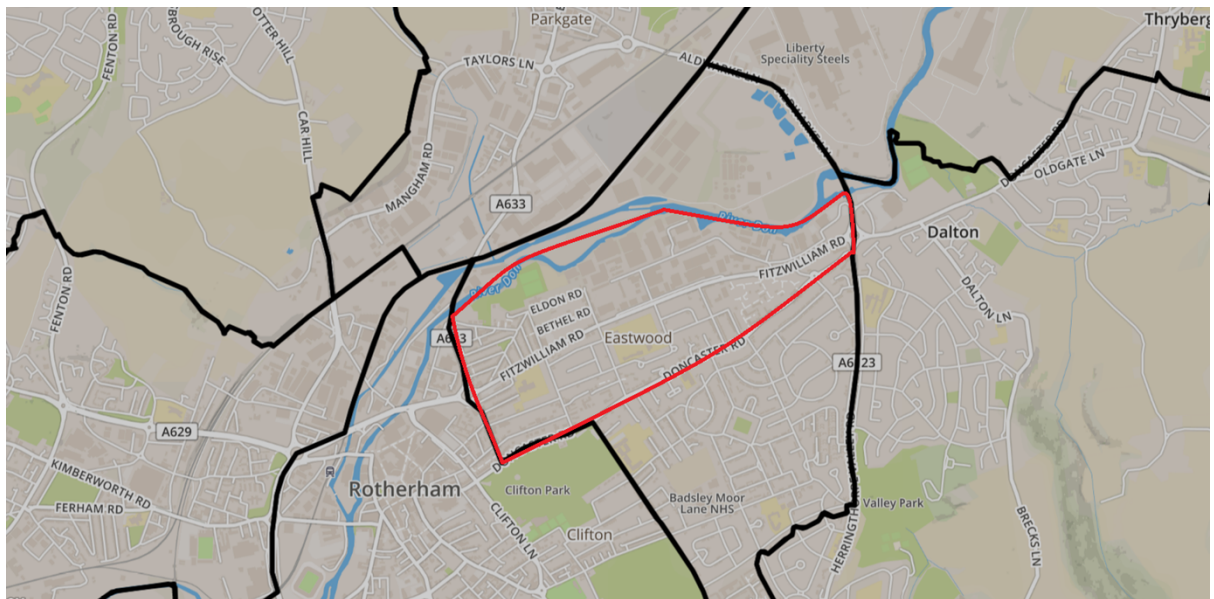
#### 5.1 Based on the evidence above, the following recommendations are being considered;

Condition	Recommendation	Rationale
Restrictions on alcohol	Proceed to consultation	Whilst there isn't a specific offence category and nor is it a required field for recorded purposes for other offences, there is clearly a level of alcohol use on the streets and this may be contributing to issues linked to rowdy/inconsiderate behaviour.
Restriction on use of foul and abusive language	Proceed to consultation	Again there is no specific offence category but similarly, the high levels of rowdy and inconsiderate behaviour suggests that further power to control foul and abusive language may assist officers in addressing ASB
Vehicle nuisance	Proceed to consultation	There is clearly evidence of local residents being aggrieved by nuisance use of vehicles, which is reflected in high levels of reporting.
Allowing or causing the accumulation of waste, refuse, furniture and/or appliances in gardens	Proceed to consultation	There is clear evidence that, in spite of reductions across most other areas, these issues persist and increase. A PSPO may provide an early and preventative opportunity whilst also setting the standards in the area. This would not take the place of statutory powers, which will still be used where necessary.
Restricted access to open spaces/ groups of people at certain times (Eldon Rd fields, Pocket Park)	Does not proceed to consultation	Whilst there are clear hotspots linked to open spaces, this may not be significant enough alone when balanced against freedom of assembly. Additionally, this may create a high expectation in the community that people would not use open spaces in large groups at night which could lead to conflict and loss of trust and confidence in statutory agencies as it is unlikely

		that resources will be sufficient to allow a response to a report of a group.
Causing or creating noise that is likely to have an impact on the quality of life of those in the locality	Proceed to consultation	Again the levels of rowdy and inconsiderate behaviour and mentions of shouting/noise/foul and abusive language within the survey returns suggest that there is a problem with on street noise. Currently there are no powers available to address this. Statutory nuisance relates only to noise emanating from a property (and some other specific categories) and ASB powers relate to persistence, requiring repeated identification. Similarly, there may be benefits from allowing officers to take swifter action on all forms of noise. A PSPO would again enable standards to be set and provide officers with the tools to address poor behaviour.
Requirement for business to maintain a tidy curtilage	Proceed to consultation	This is a clearly visible issue when attending the area, particularly in the summer months. Businesses in the area have been subject to action as a result of leaving business waste around the premises.

## 6. Proposed Conditions

- 6.1 A draft PSPO has been developed based on the above. This will be required should the decision be made to proceed to public consultation. The conditions have been formed in such a manner as to ensure they will be enforceable. The full draft order can be found attached as appendix C.
- 6.2 The proposed area is as per the area outline in red below. Bordered by the River Don, Doncaster Road, St Anne's Road and Alderwake Lane.



## 7. Outline Consultation

- 7.1 The Act, supported by statutory guidance, requires a process of consultation with key stakeholders, such as the Police and the Police and Crime Commissioner, alongside interested groups, the public and residents in the area. In order for this type of consultation to be delivered, an outline timeline is presented below, subject to approval.
- 7.2 1<sup>st</sup> March 2019 – Launch Open Consultation (pre-prepared press release, social media and survey launch)  
 1<sup>st</sup> March 2019 – Launch partner/professional consultation  
 During: Weekly drop ins at various locations (CLP, Pocket Park, Unity Centre)  
 Paper surveys (translation support available through specific drop-ins)  
 Utilise Councillor and Police drop-ins  
 31<sup>st</sup> March 2019 – Consultation close

## 8. Summary

- 8.1 Consideration needs to be given as to whether the overall decline in ASB and crime support the need to develop, consult and potentially implement a PSPO.
- 8.2 Should the levels identified be sufficient to warrant such activity, then the recommendations based on each potential condition in section 6 should be considered individually.
- 8.3 It should be noted that consultation and implementation would develop expectations within the local community. There are already challenges in terms of maintaining a presence in the area and responding to the current demand.

## 9. Key Issues

- 9.1 Failure to meet expectations created as a result of resource challenges will impact trust and confidence in both the Local Authority and the Police.

- 9.2. As with any legal process this activity carries a level of risk and officers will need to demonstrate legal compliance with the process throughout.
- 9.3 Some of the evidence is circumstantial and could be at risk of linking broad categories to specific issues.

## **10. Recommendations**

- 10.1 Overview and Scrutiny Management Board consider and provide comment on the proposed Public Space Protection Order.
- 10.2 Overview and Scrutiny Management provide comment on the proposed conditions and area to be covered.

## **11. Financial and Procurement Implications**

- 11.1 It is estimated that this consultation will take up to 5 days of a Community Safety Officer's time. This includes the development and delivery of the consultation and the analysis of the results. The estimated cost in officer time is £860. In addition, costs will be incurred in respect of room hire and interpretation facilities, which are estimated at £500, giving a total estimated cost of £1,360. The cost of the consultation will be managed within existing approved revenue budgets.
- 11.2 Subject to the outcome of this consultation exercise, the enforcement activities will be managed within existing staffing resources. This will be discussed in more detail in the report to Cabinet that presents the outcome of the consultation, prior to any implementation and enforcement.

## **12. Legal Implications**

- 12.1 The purpose of introducing a PSPO is to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. Given that the orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.
- 12.2 A PSPO can only be imposed if it passes the legal test. The Council needs to be satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:
- has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
  - is, or is likely to be, persistent or continuing in nature;
  - is, or is likely to be, unreasonable; and
  - justifies the restrictions imposed.



- 12.3 There must be clear evidence of the specific behaviour being targeted to enable the Council to satisfy the above legal test.
- 11.4 The Council should consider the potential wider impact of any PSPO and ensure that it is a reasonable and proportionate response to the anti-social behaviour evidenced.
- 11.5 As stated in section 8, the Anti-Social Behaviour, Crime and Policing Act 2014 and the associated statutory guidance, requires the Council to consult with key stakeholders. The statutory guidance also strongly recommends that the Council engages in an open and public consultation to give the user of the public space the opportunity to comment on whether the proposed restriction(s) are appropriate, proportionate or needed at all. The Council should also ensure that specific groups likely to have a particular interest are consulted.
- 11.6 Before any PSPO is made, the Council must publish the draft order in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Order (Regulations) 2014 and ensure that the draft order is available on the website.
- 11.7 Once any PSPO is made it should be published in accordance with the Regulations and must:
- identify the activities having the detrimental effect;
  - explain the potential sanctions available on breach; and
  - specify the period for which the order has effect.
- 11.8 It is important that the Council comply with all the relevant legislation and statutory guidance to ensure that any PSPO introduced is legally enforceable and to reduce the capability of any potential legal challenge, either in relation to the decision to introduce the PSPO or in relation to any enforcement in respect of the restrictions attached to the order.

## **12. Implications for Children and Young People and Vulnerable Adults**

- 12.1 The need to consult with young people has been identified and will be delivered during the full public consultation. This will be met through current resource provision in the area, which already sees a high level of engagement with young people.

## **13. Equalities and Human Rights Implications**

- 13.1 There are various languages spoken in the area and these will be considered when delivering the consultation, making use of local organisations with various language skills. A full equality impact assessment will be conducted and provided to support the final decision in May 2019 and will be informed by the full public consultation.
- 13.2 There are various relevant Human Right considerations to be made against particular conditions, including the right of assembly and the right to the peaceful enjoyment of one's possessions.

#### 14. Implications for Partners and Other Directorates

- 14.1 Clearly this report concerns South Yorkshire Police and local organisations, which will be offered the opportunity to feedback in writing, should a consultation be launched.

#### 15. Risks and Mitigation

- 15.1 As identified within the body of the report.

#### 16. Accountable Officer(s)

Sam Barstow, Head of Community Safety, Resilience and Emergency Planning  
Tom Smith, Assistant Director, Community Safety and Street Scene

Approvals Obtained from:-

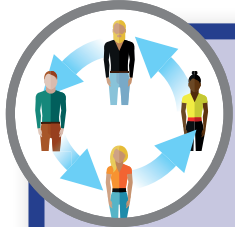
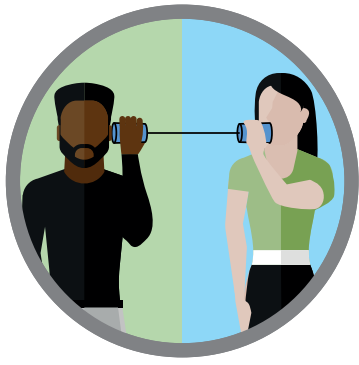
	<b>Named Officer</b>	<b>Date</b>
Strategic Director of Finance & Customer Services	Jonathan Baggley	21/01/2019
Assistant Director of Legal Services	Dermot Pearson	23/01/2019
Procurement	Karen Middlebrook	14/01/2019
CYPS	Paul Grimwood	17/01/219

*Report Author: Sam Barstow, Head of Community Safety*

This report is published on the Council's website or can be found at:-  
<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

# The Eastwood Deal

This plan delivers a focus on promoting understanding and tolerance by engaging and communicating with residents. Partners will respond effectively to crime, anti-social behaviour (ASB) and environmental complaints.



## Engaging Communities

- A consultation event, to be led by the community to inform this plan
- A calendar of events
- Encourage understanding by talking about issues
- Led by community organisations and supported by the Police and the Council
- Identify key messages to be delivered regularly (local events, local action, complaint levels, response etc)
- Identify community contacts to disseminate messages



## Visible Presence

- A base in the area
- Council staff and Police visibly working together
- Joint Patrols to jointly tackle issues
- Working at different times and different days, intelligence led



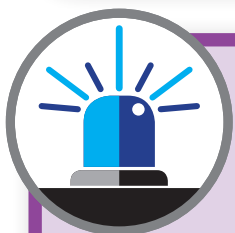
## A Nice Place to Live

- Talk about what's good in Eastwood (location, transport links, open spaces), improve perceptions
- Improve the quality and management of Housing in the area
- Improve public spaces and increase use of them



## Effective Response to Environmental Complaints

- Continue to promote the Councils environmental service
- Makes use of anti-social behaviour powers to address repeat offenders
- Identify and prioritise repeat properties and perpetrators
- Make use of regular case meetings process to review long standing or repeat complaints
- Make best use of licensing powers and be clear about what it has and can achieve



## Effective Response to Anti-Social Behaviour and Crime

- Promote access to the Councils anti-social behaviour service
- Make best use of our powers
- Jointly review police anti-social behaviour incidents
- Work together on cases, from the start, to address issues
- A regular process to manage cases, with senior leadership
- Review and prioritise repeat victims, perpetrators or locations

## **Eastwood Village Public Space Protection Order**

The PSPO is designed to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour.

### **Public Space Protection Orders- A background**

Public Spaces Protection Orders (PSPOs) were introduced to England and Wales in October 2014 by the then Conservative-Liberal Democrat Coalition Government, with parliamentary support from the Labour Party. They are one legal tool among a package of measures designed to enhance local agencies' abilities to reduce anti-social and nuisance behaviour.

A local authority may sanction a PSPO on reasonable ground that two conditions are satisfied:

1. Activities/ behaviour have had or are likely to have a detrimental effect on the quality of life of those in the locality.
2. The activity/ behaviour is likely to be of a persistent or continuing nature, such as to make the activity unreasonable.

Damian Green MP, the Minister for Policing and Criminal Justice at the time of the passage through Parliament of the Anti-Social Behaviour, Crime and Policing Act 2014, stated,

*"We all agree that public spaces are there for the enjoyment of the whole community, and we all know that there is too often a minority who spoil it for the majority. Local authorities need effective powers to tackle that minority, and we want to give them the right powers to protect communities' enjoyment of their public spaces".<sup>1</sup>*

PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life... They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.<sup>2</sup>

The term 'quality of life' is not defined in the legislation. According to the Collins English Dictionary 'quality of life' is defined 'as the general well-being of a person or society, defined in terms of health and happiness, rather than wealth.' In recent years there has been a growing interest in the concept of quality of life in many disciplines including health, economics, philosophy, sociology and architecture. Organisations such as the EU<sup>3</sup>, the World Health Organisation and national governments<sup>4</sup> have sought to measure levels of quality of life. One problem for local authorities is this lack of clear and precise definition leads measures such as the PSPO open to critiques of subjectivity.

The second component required in satisfying the legal test for a PSPO is that activities are likely to be persistent or continuing, which makes the activities unreasonable and therefore justifies these restrictions on behaviour. This dissuades the local authority from sanctioning activities which occur as a one off or very rarely. In addition to this, these activities must be reasonable; or what is perceived as so to a reasonable person.

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<sup>1</sup> Hansard, House of Commons, July 2<sup>nd</sup> 2013, Column 265

<sup>2</sup> Home Office, Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals (London: Home Office, 2014).

<sup>3</sup> Eurostat, Quality of Life: Facts and Views (Luxembourg: European Union, 2015).

<sup>4</sup> The Office for National Statistics, Measuring national well-being: Life in the UK: 2016 (London: Office for National Statistics, 2016)

## **Eastwood Village Public Space Protection Order**

In applying for such sanction, a local authority will find themselves balancing the quality of life of one group against that of another. As there is no need to establish harm, a local authority will often seek to protect the sensibilities of the law-abiding and reasonable majority.

During scrutiny of the legislation, the House of Lords proposed an amendment was added to the 2014 Act requiring that all local authorities must have regard to the rights of freedom of expression and freedom of assembly as set out in articles 10 and 11 of ECHR.<sup>5</sup> This provision has limited legal significance in that under section 6 of the Human Rights Act 1998 local authorities must already have regard to the convention rights in all of their actions, as they cannot purposefully act in contravention of these rights.

However, the statutory provision in the 2014 Act at least serves as a reminder that the PSPO is a legal intervention that has the potential to lead to the contravention of certain convention rights associated with public space. In line with ECHR and judicial review jurisprudence the local authority should be satisfied that the proposed restriction or prohibition is not arbitrary, unfair or based on irrational considerations<sup>6</sup>; it does no more than is necessary to accomplish its legitimate aim<sup>7</sup>; and that any interference with the rights of individuals is proportionate to the harm or potential harm caused<sup>8</sup>. Lord Taylor of Holbeach speaking on behalf of the Government sought to reassure peers as to how the test should be applied by local authorities:

*“Where orders are deemed to be unnecessary or disproportionate, there is still the ability for those affected to challenge it in court. The council will be mindful of this when judging whether the test has been met... The benefit to the community in tackling detrimental activities must be balanced against the impact of any prohibitions or requirements. I believe that local councils are capable of making such assessments and coming to the right decisions, having consulted the local community. If they get it wrong, or are perceived to have got it wrong, an order can be challenged in the courts”.*<sup>9</sup>

As a minimum, each PSPO must set out:

- What the detrimental activities are.
- What is being prohibited and/or required, including any exemptions.
- The area covered.
- The consequences for breach.
- The period for which it has effect.

### **Literature Review- Public Space Protection Orders**

In essence, a literature review looks at different published articles or research relevant to our subject matter. Below are some articles of note and a synopsis of findings of each.

#### **1. The Criminalisation of Public Space: The Use and Abuse of Public Spaces Protection Orders (PSPOs) in England and Wales**

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<sup>5</sup> The 2014 Act, s72(1).

<sup>6</sup> Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223; Council of Civil Service Unions v Minister for the Civil Service [1983] UKHL 6.

<sup>7</sup> The Sunday Times v. The United Kingdom (1979) 2 EHRR 245.

<sup>8</sup> R (on the application of Daly) v Secretary of State for the Home Department [2001] 3 All ER 433.

<sup>9</sup> Hansard, House of Lords 25 Nov 2013 : Column 1221.

## **Eastwood Village Public Space Protection Order**

Brown, Kevin; (June 2017) Queen's University, Belfast, *The Hyper-Regulation of Public Space: The Use and Abuse of Public Spaces Protection Orders in England and Wales* (2017) 37(3) *Legal Studies* 543-568

This paper explores through a doctrinal and socio-legal analysis how Public Spaces Protection Orders (PSPOs) are being used to enforce majoritarian sensibilities at the expense of due process and civil liberties. PSPOs were introduced to England and Wales in October 2014. These orders grant considerable discretion to local authorities to use the threat of criminal sanction to regulate activities in public spaces that they regard as being detrimental to the quality of life of residents. Initially, local authorities were slow to make use of PSPOs, but now many are now in place with their use steadily increasing. This paper fills a gap in the literature by providing a comprehensive critique of how these orders are used to target minority and vulnerable groups, whilst curtailing fundamental freedoms. The paper includes suggestions for reforms to make the PSPO function in a manner that is more compatible with a rights-based approach.

### **2. The Royal Borough of Kensington & Chelsea, Public Spaces Protection Order (PSPO) – ASB from motor vehicles**

Found at:

<https://www.rbkc.gov.uk/sites/default/files/atoms/files/ASB%20from%20Vehicles%20PSPO%20extension%20consultation%202018.pdf>

In essence, this piece is a review of the current PSPO in place in the borough which specially targets vehicle nuisance. The PSPO was launched in November 2015 after numerous nuisance complaints were received from residents and following a consultation with residents and the Police in the Knightsbridge area of the Royal Borough. The growing problem of ASB from motor vehicles in the area had increased over the previous few years. The main issue was the noise generated by “super cars” that were being driven through the area on an increasingly frequent basis. These vehicles are seen by many as status symbols and as is often the case, the louder the better. There are additional ASB issues such as sudden acceleration, loud stereo systems, illegal parking and congestion on the pavements caused by bystanders.

The article clearly stipulates a reduction of 55% in vehicle nuisance ASB in the borough from inception in 2016 to 2017. Of note, the borough has a dedicated PSPO email address for member of the public to contact, and from 2016 to 2017, has seen a drop in the usage of this by 36%.

### **3. Bhogul, K (2015), *Cornerstone on Anti-social Behaviour: The New Law*; Bloomsbury Professional Ltd**

This is a comprehensive guide of all legislation and case law used in the formulation of the Antisocial Behaviour, Crime and Disorder Act 2104. Of note, it highlights all powers contained within the legislation and justifications for its use, as well as examples of its effectiveness. This is particularly of interest to those with little knowledge or information on hand when it comes to ASB powers.

## **Evidence Based Policing- PSPOs of significance to the Eastwood Plan**

<b>Local Authority</b>	<b>Location</b>	<b>Prohibitions</b>
Gateshead Borough Council	Borough wide	<ul style="list-style-type: none"> <li>Prohibits drinking alcohol in the street</li> <li>Tackles dog fouling</li> </ul>
Richmondshire council (2018)	Colburn & Brough with St Giles	<ul style="list-style-type: none"> <li>Congregating in a group that causes, or is likely to cause harassment, obstruction or</li> </ul>

**Eastwood Village Public Space Protection Order**

(initially set up to tackle youth ASB)	(mixture of residential/ park areas).	<p>concern for safety to another person</p> <ul style="list-style-type: none"> <li>Threatening and/or abusing people within the restricted area</li> <li>Continuing to consume alcohol when required to stop doing so by an authorised officer</li> <li>Throwing objects which are liable to cause damage, nuisance, or injury to any person, animal or structure</li> </ul>
Royal Borough of Kensington & Chelsea (2015)	Borough wide initially, however they have made this smaller/ more specific due to the problems with resources to enforce such an area.	<ul style="list-style-type: none"> <li>(Revving of engine(s) (as to cause a nuisance);</li> <li>Repeated sudden and rapid acceleration (as to cause a nuisance);</li> <li>Racing;</li> <li>Performing stunts (as to cause a nuisance);</li> <li>Sounding horns (as to cause a public nuisance);</li> <li>Playing music in a motor vehicle (as to cause a public nuisance);</li> <li>Using threatening, intimidating behaviour towards another person; and</li> <li>Causing obstruction on a public highway, whether moving or stationary, including driving in convoy</li> </ul>
Oxford City Council	Foresters Tower	<ul style="list-style-type: none"> <li>Young people under the age of 21, not legally resident in Foresters Tower are prohibited from entering (or having entered, remaining within) Foresters Tower, Woodfarm, Oxford, unless visiting a named legal resident of the place.</li> </ul>
Bassetlaw District Council- June 2018		<ul style="list-style-type: none"> <li>No person shall shout, swear or act in a manner as to cause annoyance, harassment, alarm or distress to any person.</li> <li>Persons aged 16 or under, who are not under the effective control of a parent or responsible adult are prohibited from gathering in groups of 3 or more. (only applies if group is causing annoyance, harassment, alarm, distress.</li> <li>Any person, without reasonable excuse, continues to consume alcohol/ surrender any alcohol. A police officer/ designated person may dispose of any alcohol.</li> </ul>

**Of Note: The Royal Borough of Kensington & Chelsea**

Positives	Negatives
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## **Eastwood Village Public Space Protection Order**

<ul style="list-style-type: none"> <li>• A 55% reduction in complaints from 2016 to 2017</li> <li>• A 36% reduction in complaints via the dedicated PSPO email box from 2016 to 2017</li> <li>• Dedicated PSPO patrols by the Council and Police</li> <li>• Permanent traffic signage installed</li> <li>• Temporary pedestrian signage installed</li> <li>• At the busiest times for vehicle ASB, the Police utilised dispersal orders</li> </ul>	<ul style="list-style-type: none"> <li>• The PSPO cannot completely eradicate the ASB</li> <li>• Tackling foreign plated vehicles is exceptionally difficult</li> <li>• Unfortunately, the relevant embassies were not prepared to engage with this initiative</li> <li>• Council and Police officers cannot be present all the time. Both have numerous competing priorities across the 18 wards in the Royal Borough</li> <li>• Some witness statements from the public have generally been of a poor quality. The general public do not have the evidence gathering skills that Council and police officers possess</li> <li>• There are no powers under the PSPO to seize vehicles</li> </ul>
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### **Consultation**

The council can make a PSPO on any public space within its own area but before doing so it must consult with the local police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park or for specific activities such as busking or other types of street entertainment).

- The community safety partnership's strategic assessment
- Police data on crime and anti-social behaviour incidents (including the impact of some problem behaviours, such as excessive drinking)
- Hospital data on ingesting new psychoactive substances
- Calls to 101
- Calls to council services reporting incidents
- Residents' logs and photographs of anti-social behaviour
- Mapping of problem areas
- Data on the effectiveness of previous Gating Orders or Dog Control Orders
- CCTV footage of incidents
- Reports from council staff such as park
- Wardens and cleaners.

### **Scrutiny and suggested questions for overview and scrutiny committees**

These are not exhaustive, and are the ones laid out by Home Office directives on the implementation of PSPOs.

1. What evidence is there that the anti-social behaviour is or is likely to be persistent, detrimental and unreasonable?
2. Why is a PSPO being proposed to address this issue or issues?
3. Is the proposed restriction proportionate to the specific harm or nuisance that is being caused?

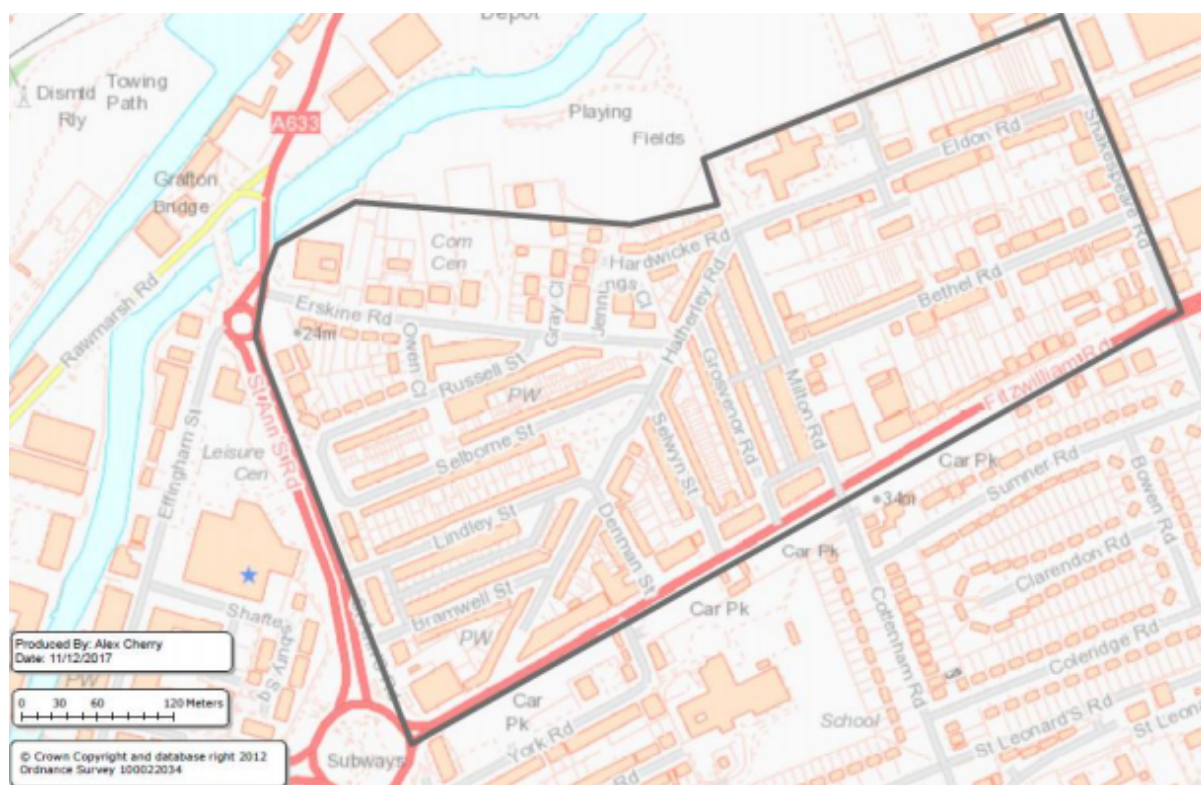


## Eastwood Village Public Space Protection Order

4. What alternative approaches are available and why is a PSPO appropriate in these circumstances?
5. Will the proposals alleviate each of the problem behaviours?
6. Have exemptions been considered?
7. What might be the unintended consequences for each aspect of the PSPO? What will be the impact on different groups? Has an equalities impact assessment been undertaken and what were its findings? What can be done to mitigate against any negative consequences?
8. How have the consultation outcomes and other evidence collated been taken into account? How will the PSPO be enforced for each restriction/requirement? Are there sufficient resources to do this effectively?

### The Eastwood Proposal

- The appropriate scope of the Order
- The area covered by the restrictions
- The potential impact of the proposals
- How each of the restrictions meets
- The legal test



### **Considerations for the area**

- Data for ASB focus on the use of the above area. Should the PSPO include the playing fields no Eldon Road? If so, where is the data to show ASB in this public space is an issue?

### Data analysis of ASB in Eastwood

2016-2017

**Eastwood Village Public Space Protection Order**

The table below shows the breakdown of ASB by result sub-class over the last 2 years:

ASB Sub-Class	Year 1	Year 2	Change	% Change
PERSONAL	207	117	-90	-43%
NUISANCE	470	389	-81	-17%
ENVIRONMENTAL	36	52	16	44%
Grand Total	713	558	-155	-22%

It is noted that volumes of Personal and Nuisance ASB have reduced whilst reports of Environmental ASB have increased. When looking at the incident types, the same top 5 issues were reported in both year 1 and year 2, albeit with Noise becoming more of a concern in year 2.

ASB Sub-Class	Year 1	Year 2	Change	% Change
ROWDY/INCONSID	349	231	-118	-34%
NOISE	35	70	35	100%
NUISANCE NEIGHBOUR	88	63	-25	-28%
VEH NUIS/INAP USE	36	43	7	19%
DISTURBANCE/FIGHTING	30	35	5	17%
Grand Total	538	442	-96	-18%

***STILL AWAITING DATA FROM RMBC REGARDING IMPACT OF PSPO IN TOWN CENTRE.***

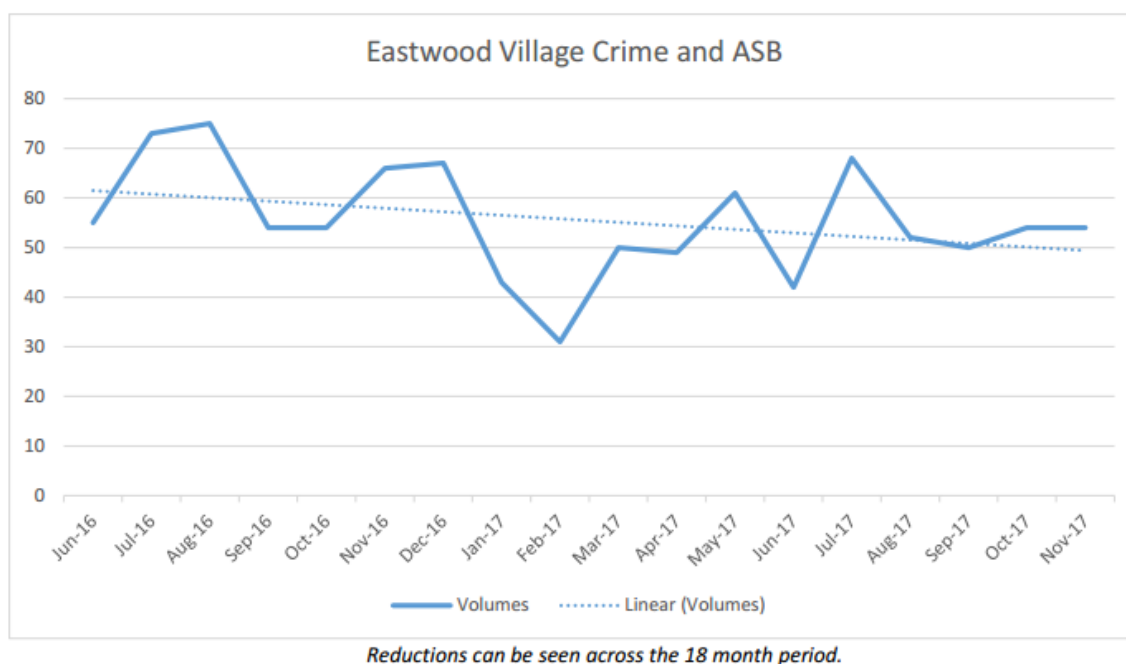
## Eastwood Village Public Space Protection Order

### ASB Volumes

- Eastwood Village recorded a **41% reduction** in ASB incidents between the two periods.
- *This is in comparison to a slightly lower reduction seen across CC as a whole, 36%.*

### Month-by-Month Comparisons

	CRIME				ASB				OVERALL			
	2016	2017	change	%	2016	2017	change	%	2016	2017	change	%
June	21	26	5	24%	32	16	-16	-50%	53	42	-11	-21%
July	31	45	14	45%	41	23	-18	-44%	72	68	-4	-6%
August	38	35	-3	-8%	33	17	-16	-48%	71	52	-19	-27%
September	31	37	6	19%	22	13	-9	-41%	53	50	-3	-6%
October	32	37	5	16%	20	17	-3	-15%	52	54	2	4%
November	41	41	0	0%	21	13	-8	-38%	62	54	-8	-13%
Total	194	221	27	14%	169	99	-70	-41%	363	320	-43	-12%



Scrutiny	
Restrictions on alcohol	<ul style="list-style-type: none"> <li>• Issuing a PSPO ticket will be easier than a section 5 ticket.</li> <li>• Potential to sanction businesses in the area selling strong alcohol (as in Town Center).</li> <li>• More so a summer issue</li> <li>• Can the behaviour be deemed unreasonable and therefore meet the legal test?</li> <li>• Cannot issue a ticket to anyone that is already drunk</li> <li>• PCSO have not dealt with anyone drunk and disorderly in the Village area.</li> </ul>
Use of foul and	<ul style="list-style-type: none"> <li>• Allows for non-police staff to deal with behaviour positively and</li> </ul>

**Eastwood Village Public Space Protection Order**

abusive language	<p>instantaneously; by enabling them to do so, will reduce reports and demand on police.</p> <ul style="list-style-type: none"> <li>Limited in scope- could it be extend to behaviour that causes annoyance, harassment alarm and distress (Town Centre evidence base/ evidence from other local authorities).</li> </ul>
Vehicle nuisance	<ul style="list-style-type: none"> <li>Gives council officers a power to enforce vehicles being driven in an antisocial manner.</li> <li>It is an issue in Eastwood.</li> <li>Police/ PCSO already have powers to ticket obstructions/ seize etc with ADM171/2.</li> <li>Council has power to ticket for double yellow line parking</li> <li>Cannot be issued for speeding as speed is objective and too open to legal scrutiny.</li> <li>As in Kensington- there is difficulty implementing a PSPO on a foreign vrm.</li> </ul>
Tidy gardens	<ul style="list-style-type: none"> <li>Will encourage residents and landlords to maintain properties.</li> <li>Gives a proportionate impact- visit, warning, revisit, ticket.</li> <li>Enables police to tickets for untidy/ dirty gardens.</li> <li>Potential to save money from an environmental health perspective, as council will not be having to clear such large amounts of waste.</li> <li>Do selective licensing have the power to enforce already? If so, is this creating more bureaucracy than needed?</li> <li>Police/ PCSOs have a lack of training on environmental issues- yes we understand what is deemed 'messy' but may be less willing to ticket for the offence.</li> <li>Difficulty in accessing most rear gardens due to design in Eastwood.</li> <li>Most gate key locks have been changed.</li> <li>Could it be fly tipping- and therefore are we sanctioning the wrong person?</li> <li>May encourage people to fly tip elsewhere in Eastwood.</li> </ul>
Restricted access to open spaces/ groups of people	<ul style="list-style-type: none"> <li>Lower burden of proof needed than a section 35 dispersal and therefore</li> <li>Contravenes a person's human rights as set out in the ECHR.</li> <li>PCSOs never needed to disband groups of people in the village area.</li> <li>Police do have s35 dispersal if needed- when was the last used in Eastwood.</li> </ul>
Noise nuisance	<ul style="list-style-type: none"> <li>Out of hours runs between Thursday-Sunday; does this mean they will be able to instantly issue tickets?</li> <li>Difficulty in judging reasonable noise levels- could some noise ie a party be considered a 'one-off' and therefore not satisfy the legal test of the PSPO?</li> <li>Council power to enforce nuisance noise already exist.</li> <li>Council officers working after 16:00 in order to enforce the majority of noise complaints happening after these hours. Will it become the</li> </ul>

## Eastwood Village Public Space Protection Order

	sole burden of SYP to do so?
Business tidiness	<ul style="list-style-type: none"> <li>• Enables a wider scope of police powers</li> <li>• Lack of training in the police to help enforce this.</li> </ul>
<p>Evidence from residents may be subjective</p> <ol style="list-style-type: none"> <li>1. Allows for reports from local residents to sanctioned immediately</li> <li>2. Reports from locals about ASB are limited, and arguably too subjective to use as evidence of a sanction being ignored.</li> <li>3. Evidence gathering to sanction individuals may become a higher burden than is proportionate.</li> </ol> <p>Many of the sanctions covered in the proposals can be tackled by police/ council powers/ departments already</p> <ol style="list-style-type: none"> <li>1. Allows police/ council to share work loads more effectively by widening powers for both branches.</li> <li>2. However, is it just a way of saving money from a wider budget by conferring these powers to all eg selective licensing core role will be effected by gardens proposals, environment agency by the businesses one.</li> </ol> <ul style="list-style-type: none"> <li>• Human rights and contravening these</li> <li>• Public perceptions of only Eastwood Village being sanctioned may be detrimental to conducive living within wider Rotherham.</li> <li>• An issue of resource</li> </ul>	

### Conclusions

There is no doubt that a PSPO for the Eastwood Village area would help to tackle issues that have been the foundation of living in this community for far too long. The safety and quality of life of those in the area is paramount; no one disputes this and the PSPO will give us unbridled powers as both police and council workers to tackle issues that would sometimes require months of evidence gathering.

Training for those implementing such powers from both a police and council perspective will be needed to ensure its success ie training for police on tidiness/ cleanliness from an environmental health perspective, and training for the council from a traffic perspective to name a few.

It is also important to establish clear boundaries on expectations of enforcement ie, what, if any evidence is required to issue a ticket successfully?

In addition, we cannot forget the caveat of resource. In order for PSPOs to be successful, there must be dedicated officials in that area at all hours of the day. Is there scope for council workers to go beyond, or reestablish duty times in order to accommodate this? Will there be extra resources guided into the area in order to make the enforcement successful?

**Eastwood Village Public Space Protection Order**

## Proposed Timeline

PSPO Timeline							
Activity	Nov	Dec	Jan	Feb	Mar	Apr	May
Establish Timeline							
Outline Potential Conditions							
Establish Evidence Base							
Draft consultation plan							
Cabinet - Decision to Consult							
Consultation							
Develop Implementation Plan							
Cabinet - Final Decision							
Implement							

APPENDIX C            Rotherham Metropolitan Borough  
Council Public Space Protection  
Order (Town Centre and Clifton  
Park)

Notice is hereby given that Rotherham Metropolitan Borough Council ('The Council') in exercise of its powers under the Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act'), being satisfied that the conditions laid out with Section 59 are met, make the following order:

1. This order relates to the land described in Paragraph 1 of the Schedule below and defined by the red border on the plan attached to this Order ('the restricted area'), being a public place in the Council's area to which the Act applies:
2. The order may be cited as the Rotherham Metropolitan Borough Council Public Space Protection Order (Eastwood) and shall come into force on a date to be confirmed, subject to consultation and final agreement, for a maximum period of three years
3. The following activities have caused, or are likely to cause, a detrimental effect on the quality of life of those in the locality;
  - a. Acting in a drunken manner, which may include being loud, intimidating or incapable
  - b. Using loud, foul or abusive language
  - c. Allowing or causing the accumulation of waste, refuse, furniture and/or appliances in gardens
  - d. Shouting, screaming or acting in a generally rowdy and inconsiderate manner
4. The effect of this order is to prohibit the following activities within the prescribed area, (as shown within the first map at appendix A).
  - a In this area any person who carries out acts from which they are prohibited, commits an offence, namely;
    - i. Consuming alcohol other than on licensed premises or at a licensed event
    - ii. Behaving in such a way or using language that causes, or is likely to cause, harassment, alarm or distress to another person.
    - iii. Causing noise that is likely to have a detrimental impact on a person(s) quality of life
  - a) A person guilty of an offence under conditions a (i) – (vi) above,

under section 67 of the Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£2000) or a fixed penalty notice at a maximum of £100.

b) A person guilty of an offence under condition (vii) is guilty of an offence if they fail to comply with the request of an authorised officer to surrender any sealed or unsealed containers of alcohol in their possession and under Section 63 and is liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500) or a fixed penalty notice at a maximum of £100.

5. The effect of this order is to require all relevant persons undertake the following activities within the prescribed area

i In this area all occupiers of properties or, in the case of vacant properties the Landlords/Owner, are required to maintain their gardens, driveways and any other outdoor space free from litter, waste, furniture, kitchen appliances or any other items which could be considered waste;

a) A person guilty of an offence under conditions (i) above, under section 67 of the Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£2000) or a fixed penalty notice at a maximum of £100.

6. The Council is satisfied that the conditions laid out within Sections 59, 63, 64 and 72 of the Act have been satisfied and that it is in all circumstances expedient to make this order to reduce the detrimental effect, or likely effect, in the Restricted Area, that the behaviours outlined have or were likely to cause. The effect or likely effect of these activities is of a persistent or continuing nature.

7. The restrictions in paragraph 4 apply to all persons and at all times.

## **APPEAL**



Interested persons can challenge the validity of the order on two grounds: that the Council did not have the power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation, for instance consultation, has not been complied with.

Interested parties may lodge an appeal to the High Court within 6 weeks of this order being made.

Order Made By Cabinet

Dated.....

Appendix A – The Restricted Area – Outlined in Red

Bordered by the River Don, Doncaster Road, St Anne's Road and Alderwake Lane

