

Summary Sheet

Committee Name and Date of Committee Meeting

Improving Lives – 17th July 2018

Report Title

Children and Social Work Act 2017 – Implications for Practice

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

No

Strategic Director Approving Submission of the Report

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Report Author(s)

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Ward(s) Affected

All

Summary

The Children and Social Work Act 2017 is intended to improve the support for looked after children (LAC), previously looked after children and care leavers, promote the welfare and safeguarding of children and make revised provisions about the regulation of social workers.

This report will focus solely on the implications for looked after children, previously looked after children and care leavers.

This report outlines the main legislative changes in the Children and Social Work Act 2017 and how the Council aims to implement those changes locally to ensure that our care leavers have the brightest future.

For the full text of the Act, please refer to:

www.legislation.gov.uk/ukpga/2017/16/contents/enacted

Recommendations

Improving Lives Select Commission is recommended to note the changes in practice that the Act will require along with the specific implications there will be for Rotherham CYPS.

List of Appendices Included

None

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Children and Social Work Act 2017 – Implications for Practice

1. Recommendations

- 1.1 Improving Lives Select Commission is recommended to note the changes in practice that the Act will require along with the specific implications there will be for Rotherham CYPS.

2. Background

- 2.1 The Act sets out corporate parenting principles for the Council as a whole to be the best parent it can be for the children in its care. These are largely a collation of existing duties local authorities have towards looked after children and those leaving care. Local authorities will be required to publish their support offer to care leavers and to promote the educational attainment of children who have been adopted or placed in other long-term arrangements. The legislation extends the current considerations of the court when making decisions about the long-term placement of children to include an assessment of current and future needs and of any relationship with the prospective adopter.
- 2.2 As corporate parents, it is every Councillor's responsibility to make sure that the Council is meeting these duties towards children in care and care leavers. Children can be in care in a range of different settings, with the authority acting as corporate parent to all of them. This includes foster care, children's homes, secure children's homes and kinship care.
- 2.3 Every Councillor and officer within a Council has a responsibility to act for those children and young people as a parent would for their own child. Lead members, those on corporate parenting panels, and overview and scrutiny committees will have particular responsibilities.

There are 64 sections in the Act. The first 10 have direct relevance to LAC and Care Leavers.

The following provisions of the Act came into force on 1st April 2018 -

- (a) section 1 (corporate parenting principles); (b) section 2 (local offer for care leavers); and
(c) section 3 (advice and support).

3. Key Issues

- 3.1 Section 1 introduces the 7 principles of Corporate Parenting which local authorities must give due regard to for both LAC and Care Leavers whether or not they were the local authority who looked after the child. These principles are:-
- To act in the best interests of, and to promote the health and wellbeing of relevant children and young people.
 - The need to encourage relevant children and young people to express their views, wishes and feelings.
 - The need to take account of a relevant child or young person's views, wishes and feelings.

- The need to help relevant children and young people to gain access to and get the best use of the services provided by the local authority and its partners.
- The need to promote high aspirations amongst relevant children and young people and the need to secure the best outcomes.
- The need for relevant children and young people to be safe and for stability in their home lives, relationships and education or work.
- The need to prepare relevant children and young people for adulthood and independent living.

3.1.1 The implication for Rotherham CYPS is that the Corporate Parenting Panel will need to review and formally adopt these principles and then benchmark current practice against them. The Panel may then need to agree and implement an Action Plan in order to ensure that any shortfalls are reviewed and addressed. This will be a focus of attention in the forthcoming Corporate Parenting Panel meetings.

3.2 Section 2 requires local authorities to publish information about the services it offers to care leavers which may assist them in preparing for adulthood and independent living. These services may include health and wellbeing, education and training, employment, accommodation, and participation in society. It is distinct from the special educational needs and disability (SEND) local offer stipulated by the Children and Families Act 2014.

3.2.1 Rotherham has had a formal offer to its care leavers that was approved by the Corporate Parenting Panel in February 2017. This Guide to Financial Support for Young People Leaving Care in Rotherham includes formal commitments in respect of the financial assistance available for eligible and relevant and former relevant young people, provision of accommodation, support for young people to access further education, employment or training opportunities including apprenticeships and support in special circumstances including for care leavers who were unaccompanied minors and support with Criminal Injuries claims.

3.2.2 However, one year after its launch this Guide would benefit from a review as the focus on the health and wellbeing of care leavers and their participation in society is not as well developed as it could have been. In addition, the Leaving Care team has instigated further developments over the course of the past 12 months including a formal offer for care leavers who are pregnant or young parents. This aspect of the offer would usefully be incorporated into the full Guide to better meet the expectation laid out in the Act.

3.3 Section 3 requires local authorities to appoint a personal adviser for care leavers who request one up until the age of 25, regardless of whether the young person intends to pursue education or training. The local authority also has a duty to carry out an assessment of the young person's needs and to provide the necessary advice and support. This duty is initiated as from April 1st 2018.

3.3.1 In respect of the impact for practice in Rotherham it is envisaged that care leavers' needs will vary considerably. Some of them will, from time to time, require only limited support to resolve a relatively straightforward query or to be signposted to another specialist service such as careers guidance. Other young adults will require more intensive support for a limited period of time when they are facing particular challenges, such as losing their job or receiving a benefit sanction or facing eviction, but then require only limited support once they are back on track. There will be a small number who have complex needs and will need intensive ongoing support but it will be very difficult to predict both how many young people will request support after the age of 21, or what type and level of support they will need. However, a scoping exercise undertaken with Trafford local authority, which had been offering support to all its care leavers to age 25 for a number of years, suggested that around 15% of care leavers were actively receiving support in any given week, and that on average this equated to each young person receiving about 2 hours' Personal Adviser time per week. In Rotherham this would equate to approximately one f.t.e Personal Adviser role. The Leaving Care Team has recently had approval to increase the number of Personal Advisers and it is therefore anticipated that this additional function will be assimilated within existing staff resources.

3.4 Section 4 places a duty on local authorities to make advice and information available to parents, designated teachers in maintained schools, and academies to promote the educational achievement of previously looked after children. A local authority must appoint an officer employed by them or another authority to discharge the duty to provide advice and information.

3.4.1 Local authorities have a duty under section 23ZZA of the Children Act 1989 (inserted by section 4 of the Children and Social Work Act 2017) to promote the educational achievement of previously looked-after children in their area by providing information and advice to:

- any person that has parental responsibility for the child;
- providers of funded early years education, designated teachers for previously looked-after children in maintained schools and academies, and
- any other person the authority considers appropriate for promoting the educational achievement of relevant children.

3.5 Section 5 places a duty on the governing body of a maintained school to designate a member of school staff to have responsibility for promoting the educational achievement of previously looked after children, including those who are now the subject of an adoption, special guardianship or child arrangements order.

3.5.1 Although the responsibility of schools and the LA for supporting previously looked after children does not commence until September 2018 meetings have already held between the Virtual School, the Head of LAC Service, the Therapeutic Team manager, the post adoption team, the post SGO social worker and the post adoption therapeutic intervention worker, to consider how we could work in collaboration in

discharging the new statutory responsibilities of the Virtual School. The initial phase of this work was to attempt to scope the potential numbers of children involved and it has been calculated that there are approximately 200 active post adoption cases and 150 active post SGO cases. However, many of these cases only involve sporadic support or signposting and in fact there are approximately 'only' 20 acute post adoption cases and 15 acute post SGO cases currently receiving more intensive support.

3.5.2 At this meeting it was agreed that:-

- The Virtual School will modify the training it already provides to carers, schools, governors, social workers and so on to incorporate the new responsibilities to provide support for post LAC.
- Duty and Assessment and MASH will require guidance and training to ensure that enquiries are directed appropriately.
- Systems and processes need to be established to signpost, provide advice and guidance to all relevant parties.
- The Virtual School will provide consultancy to the post LAC team who will act as gatekeepers, given that demand will always exceed supply.
- The Virtual School will aim to attend the post adoption support group on a regular basis.
- There will need to be significant amounts of awareness raising to ensure that head-teachers and school governors engage fully with the new legal duties.
- This may include actively encouraging school capacity building measures such as developing Emotional Literacy Support Assistants.
- That we consider providing highly accessible leaflets/communications to parents, carers and teachers in the area of understanding and responding to challenging behaviour.
- That further liaison is held with the Early Help Service to clarify what part they could contribute in fulfilling this new duty.

3.6 Section 6 imposes a provision on all existing and new academy agreements requiring the proprietor of an academy to designate a member of staff to have responsibility for promoting the educational achievement of relevant children and young people. The proprietor must ensure that person undertakes training and has regard to guidance issued by the Secretary of State.

3.6.1 Within Rotherham the Virtual School will ensure that all Academies in the RMBC are made aware of this new legal requirement.

3.7 Section 7 amends the Children and Young Persons Act 2008 to require the governing body of a maintained school to ensure that the designated teacher for looked after pupils has regard to any guidance from the Secretary of State. Previously, only the governing body was required to do so.

3.7.1 Once again within Rotherham the Virtual School will ensure that maintained schools are made aware of this new legal requirement.

3.8 Section 8 extends the definition of the permanence provisions in the Children Act 1989 so that it includes kinship care, adoption, and other types of long-term care. The courts will now be required to consider the impact on the child

concerned of any harm they have or are likely to have suffered; their current and future needs, and the way in which the long term plan for the child's upbringing would meet those current and future needs. Social workers will have to give full consideration to these issues in the child's Care Plan and as a result they may require some additional guidance from the Public Law Outline Care Manager to ensure they abide by this additional expectation.

- 3.9 Section 9 amends the Adoption and Children Act 2002 and requires courts and adoption agencies to consider the child's relationship with their prospective adopters in decisions relating to the adoption if the child has been placed with those prospective adopters.
- 3.10 Section 10 amends legislation to allow local authorities in England and Wales to place children in secure accommodation in Scotland.
- 3.11 As it can be seen the most significant impact arising from the Children and Social Work Act 2017 will be the new expectation of an assessment of need and provision of support for care leavers up to the age of 25 and the requirement to promote the educational outcomes for children previously looked after and now subject of an Adoption Order, Special Guardianship Order or Child Arrangement Order. Rotherham CYPS has already assessed the likely impact of these revised legal duties and anticipate that the new provision can be met within existing services.

4. Options considered and recommended proposal

- 4.1 Given that these new duties arise from legislative changes there are no suggested options to consider and Improving Lives Select Commission is recommended to endorse the proposals contained in this report.

5. Consultation

- 5.1 There has already been some consultation with partners who will be required to support some of the new requirements but further awareness raising will need to be undertaken with maintained schools and academies within Rotherham.

6. Timetable and Accountability for Implementing this Decision

- 6.1 All the requirements of the Act will need to be in place by September 2018. Head of Service, Children in Care and Peter McNamara, Virtual School Headteacher (interim) will be responsible for overseeing the implementation of the revised legislation.

7. Financial and Procurement Implications

- 7.1 The first major potential implication is the financial burden on local authorities, as the requirement to provide advice and support, a personal advisor and a pathway plan extends to young persons up to 25 who are not in education or training. The legislation also affects children who are present in the UK but have no recourse to public funds. Whilst it is envisaged children that fall within this provision will be caught by *section 54* and *Schedule 3* to the Nationality, Immigration and Asylum Act 2002 (NIA 2002) (which provides a list of services the local authority is permitted to exclude for certain groups of

migrants such as who are unlawfully in the UK), it does not include the wider band of persons, who have an embargo on access to public funds, but have valid claims for leave to remain and who therefore are not caught by Schedule 3 to the NIA 2002. In order to mitigate the additional costs incurred by extending the role of the Personal Adviser to 25 the DfE has recently published the Extended Personal Adviser Duty Grant Determination 2018-19. As a result of this Rotherham will receive an additional £12,901 which will clearly not meet the anticipated additional costs this legislation will bring. Unfortunately the funding formula was based on the number of Care Leavers as at March 2017 since when the number of LAC and care leavers has significantly increased.

8. Legal Implications

The Children and Social Work Act 2017 received Royal Assent on 27th April 2017.

8.1 Corporate Parenting Principles

Section 1 of the CSWA 2017 Act introduces corporate parenting principles which comprises of seven needs that local authorities must have regard to whenever they exercise a function in relation to looked after children and care leavers. These principles will apply to the every part of the local authority and not just to children's services in how it carries out its functions to ensure that there is more joined up approach in relation looked after children and care leavers. These are largely a collation of existing duties local authorities have towards looked after children and those leaving care.

8.2 Council tax exemption

As stated above, S1 of the CSWA 2017 states that every part of the local authority will need to consider the extent to which the corporate parenting principles are relevant to their particular service area and all service areas can have a role in supporting care leavers.

The Council has power as a billing authority under S13A (1) (c) of the Local Government Act 1992 to reduce to nil to reduce the amount of council tax payable by young people leaving in care. The power to reduce council tax to nil is limited to those young people living in care in the borough. However, financial support can be offered to meet the cost of council tax that may be payable by RMBC's leavers who live outside the borough. Rotherham has already implemented this exemption to its care leavers in full

8.3 Apprenticeships

The funding for apprenticeship training is no longer restricted to younger age groups, although some additional funds are available for younger groups and 19-24 year old care leavers. Generally the Council will need to advertise apprenticeship opportunities to every age group within of the community to avoid giving the impression that apprenticeships are just for young people even if in practice the majority of those applying for and being offered them are young; otherwise the Council may be vulnerable to claims of age discrimination.

The Council's Local offer can include employment services and support that is specifically available to care leavers. In the context of age discrimination in having a quota of apprenticeship places for care leavers, it is lawful for the Council to make such an offer to care leavers provided that the Council is able to demonstrate that there is justification for this offer, which promotes fairness and accords with a social policy aim to secure best outcomes for care leavers

8.4 **Public Sector Equality Duty**

Under Section 149 the Equality Act 2010, the Council has a duty to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics covered by the Equality Duty are as follows:

- Age, disability, gender reassignment, marriage and civil partnership (but only in respect of eliminating unlawful discrimination), pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex and sexual orientation.

The public sector equality duty requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a "protected characteristic" and those who do not share that protected characteristic.

- 8.5 The Court of Appeal in *SO v London Borough of Barking & Dagenham* [2010] EWCA Civ 1101 decided that section 23C(4)(c) of the CA 1989 encompassed the provision of accommodation. Therefore, many of these young people with no recourse to public funds are provided with accommodation under section 23C(4)(c) by the LA. Section 23C(4) of the CA 1989 continues to apply to young people up to the age of 21 and the CWSA 2017 does not repeal or change those provisions. However the CSWA 2017 now extends the application of section 23C(4) to young people between the ages of 21 and 25. It is no coincidence that following the debates in the House of Lords, the wording of the new section 23CZB(5) is more explicit, in that section 2(2) of the CSWA 2017 is clear that services that may assist care leavers, includes services relating to accommodation. It is clear that accommodation is a service a LA can consider providing, if it considers the young person requires it.

In the same way that the "well-being principle" is at the heart of the Care Act 2014, the "corporate parenting principles" is the heart of the CSWA 2017. Although the principles do not add anything new to local authorities' duties, it does bring the young person back into focus and attempts to bring the corporate parent in line with a biological parent. In practical terms, nothing much should change and this principle in itself does not herald a massive change in practice. In theory, local authorities should have been working with these principles in mind in any case. However, some local authorities whose

focus may have shifted in recent years may need to revisit their policies and procedures to ensure compliance with the corporate parenting principles. The discussions in the House of Lords noted that local authorities, being one of the biggest employers, should do more to secure employment for those children it “parents”. This appears to make sense and it is recognised that some local authorities do more than others to create opportunities for their care leavers.

The CSWA 2017 also has the effect of imposing a further responsibility on local authorities in relation to children who are being educated within the local authority area and who may have been looked after by another local authority.

9. Human Resources Implications

- 9.1 There are already some reviews of staffing and structures being undertaken to ensure that CYPS have the relevant staff and skills to meet the requirements of the Act. Further support for training and development needs may also be required.
- 9.2 As per the legal implications, the Council will be expected to do more to secure employment for children it parents which may involve additional work for the HR Department.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 The offer of additional educational support being made available post-permanence will be likely only to improve their educational outcomes. The extended offer to care leavers to the age of 25 will also assist in providing more support to those vulnerable adults who otherwise would be at greater risk of being NEET or living in insecure accommodation.

11 Equalities and Human Rights Implications

- 11.1 The Council’s corporate parenting duty extends to all care leavers to whom the local authority owes a duty, regardless of their current area of residence. On that basis the support offered should be broadly similar, irrespective of where a young person resides.

12. Implications for Partners and Other Directorates

- 12.1 Given the strengthening of the Corporate Parenting responsibilities, especially in respect of the apprenticeship offer, there will clearly be implications for other directorates although through the Corporate Parenting Panel agenda this is already being progressed. Given the extension of responsibility for care leavers to the age of 25 there will clearly need to be closer partnership working with Adults Services.

13. Risks and Mitigation

- 13.1 Looked After Children and care leavers are a vulnerable group that are at risk of a number of factors – poor education and training, health, safeguarding and transition into adulthood.

14. Accountable Officer(s)

Ian Walker – Head of Service, Children in Care

Peter McNamara – Virtual School Headteacher (Interim)