

**HEALTH AND WELLBEING BOARD: 16<sup>th</sup> JULY 2015**

**REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES**

**SPECIAL EDUCATIONAL NEEDS AND DISABILITIES (SEND) REFORM  
UPDATE**

**Purpose of report**

1. The purpose of this report is to update the Health and Wellbeing Board on the progress to date in regards to the implementation of SEND reform as part of the Children and Families Act.
2. The Health and Wellbeing Board is asked to:
  - a. Note the current progress in implementing SEND reform, particularly in relation to the integrated working and contribution made by health professionals;
  - b. Note the intention of Ofsted to develop a specific framework to inspect local areas from spring 2016.

**Policy Framework and Previous Decisions**

3. The Children and Families Act received Royal Assent on 13<sup>th</sup> March 2014. Part 3 of the Children and Families Act outlines new responsibilities across education, health and social care for children and young people with special educational needs and disability. This includes a new Code of Practice which was re issued in January 2015.
4. The Children and Families Act 2014 has major implications for how the NHS commissioners and Clinical Commissioning Groups (CCGs) organise and deliver services to children and young people who have a Special Education Need and/or Disability between the ages of 0 and 25. It has reformed the system of support across education, health and social care to ensure that services are organised with the needs and preferences of the child and their family firmly at the centre, from birth to the transition to adulthood.
5. It is expected that all partners will work together to deliver a person-centred approach through:
  - Education, Health and Care (EHC) plans and assessment processes;
  - A Local Offer;
  - Personal Budgets offered in EHC plans;
  - Mediation and dispute resolution arrangements;
  - Joint commissioning arrangements.
6. Included is the requirement for CCGs to:
  - Commission services jointly for children and young people (up to 25) with SEND, including those with EHC plans;
  - Work with the local authority to contribute to the Local Offer services available;

- Have mechanisms in place to ensure practitioners and clinicians will support the integrated EHC needs assessment processes;
  - Agree Personal Budgets where they are provided for those with EHC plans.
7. At the meetings on 13 March 2014 and 22 January 2015, the Health and Wellbeing Board received papers which provided information about the Children and Families Act and within it, the revised Code of Practice for Special Educational Needs and Disability.
  8. At the meeting on 15 March 2015 the Health and Wellbeing Board agreed to consider the key questions outlined in the Department of Health's guidance. It was agreed that a focus group of representatives would meet to discuss the Board's response to the questions. This group met on 2 June 2015.

## **Background**

9. Leicestershire places a high priority on improving the outcomes and raising aspirations for all children and young people aged 0-25 with special educational needs and disability. In line with national statistics, 16.25% of Leicestershire children of school age have a special educational need, compared to 17.9% nationally of school age children and young people are identified as having a special educational need and/or disability. The vision for all children is that they live in safe and thriving communities where they enjoy good health and wellbeing and achieve their potential.
10. Locally, the reform has been planned in two phases with an implementation time of three years to 2018. Phase one focused on meeting the initial milestones for September 2014. These were met in Leicestershire and this was reported to the Board in January 2015. Phase two is a longer period of time focusing on the cultural shift which underpins the reform. Fundamental to the success is the joint commissioning and accountability of health, education and social care professionals at strategic and operational level.
11. Across this group of young people 0-25 there is a diverse range of health needs, which include children and young people with long term health conditions, children and young people with autism, children and young people with sensory impairments and children and young people with mental health issues. It also includes children and young people with multiple and complex needs who may be dependent on technology, children and young people with behaviour that challenges and children and young people with a life-threatening or life-limiting condition.
12. Meeting these health needs requires a range of different health services. The emphasis is to create a system whereby integrated services for children, support them to make decisions about their own care or adequately support them during the transition to adult services.

## **Current Position**

### **Internal Audit of SEND reform**

13. An internal audit was carried out in April 2015. The audit concluded that substantial assurance can be given that the key elements of SEND reform were on track. The main points raised were:

- a. The local offer has been development in accordance with the core information as set out in the Code of Practice. Further work is now underway to develop a more user friendly website and to link this with the online project for the County Council website.
  - b. The conversion of Education, Health and Care plans is on track and these have been positively received by children and families. Work is underway to ensure that contributions from health and social care partners are received promptly. This was highlighted as a concern in feedback from Leicestershire Family Voice as part of the audit process.
  - c. There has been limited progress with the development of personal budgets. More recently there has been financial modelling to consider ways in which social care and education budgets can be more aligned. The NHS is developing a personal budget offer.
14. Recommendations and a management action plan have been agreed with the following priorities:
- a. The 'local offer' should be subject to continuous development and take account of regular feedback from users.
  - b. At the earliest opportunity, a nominated officer from the business should be given responsibility for the maintenance, continuous review / update of the local offer / web-pages.
  - c. Ensure that communication with children and families is widely distributed in a range of formats
  - d. Review eligibility criteria to ensure these are in line with the new Code of Practice and approach to assessment.
  - e. Ensure that information from partners and other agencies is shared promptly and contributes to an integrated assessment process.
  - f. Develop an approach to personal budgets to ensure that they fully comply with the Code of Practice, Section 9.

**Integrated working with health professionals (to cover joint commissioning strategy and responses to questions)**

15. The Children and Families Act and SEND Code of Practice is explicit in requiring local governance arrangements to be in place to ensure clear accountability for commissioning services for children with special educational needs and disabilities from birth to the age of 25. There must be clear decision making structures so that partners can agree the changes that joint commissioning will bring in the design of services. This will help ensure that joint commissioning is focused on achieving agreed outcomes. Partners must also be clear about who is delivering what, who the decision makers are in education, health and social care, and how partners will hold each other to account in the event of a disagreement. The partners must be able to make a decision on how they will meet the needs of children and young people with special educational needs or disabilities.
16. In respect of joint commissioning there are a number of areas that are being progressed. Discussions have been taking place with the lead commissioner for the Clinical Commissioning Groups and work has commenced on the development of a framework for future joint commissioning. The framework will set out how services will be planned and commissioned across the Council and the CCGs, based on

engagement and co-production with children, young people and families which have influenced commissioning decisions.

17. In addition to the framework, work to develop the joint commissioning strategy is in train. A range of data which informs the needs assessment, is being drawn together that will ensure that the needs of the population are clearly identified and shared. This will help to define where there are gaps in service or lack of equity across the county (services may not be available in some areas).
18. The system to deliver personal health budgets for those children and young people who have continuing health care has been agreed with colleagues in adult services. This will ensure consistency for young people who move into adult services. Further work is now required in relation to broadening the offer of personal health budgets and the links to the Education, Health and Care Plans. Once these signed off by all relevant parties, the framework will act as the catalyst to fundamentally change the way in which services are commissioned in the future for children and young people with complex conditions or SEND. There remains work to do to ensure that the education and social care elements of the budgets are fully modelled and understood as part of this developmental process.
19. At its meeting on 12<sup>th</sup> March 2015, the Health and Wellbeing Board requested that an audit be undertaken to ensure that the CCGs and Leicestershire County Council can evidence where and how they are working together in respect of the SEND agenda. The audit should look to see what is working well, identify any issues and ensure that there is a system in place to resolve them. A meeting took place on 2<sup>nd</sup> June between lead commissioners from the CCG's and officers from Children and Family Services where the key questions were considered. In summary, the findings were:
  - a. The Clinical Commissioning Groups have ensured that the SEND agenda is a priority area and is reflected in all the CCG operating plans for 2015/16. Other than the Joint Health and Wellbeing strategy the Health and Wellbeing Board does not have a specific policy statement relating to SEND reform  
<http://www.westleicestershireccg.nhs.uk/page/operational-plan>  
<http://www.eastleicestershireandrutlandccg.nhs.uk/our-strategies-and-plans>
  - b. All of the plans and service developments for future commissioning are based on the Joint Strategic Needs Assessment (JSNA). The JSNA will inform the joint decisions made for children and young people with SEN and disabilities, which will, in turn, be reflected in the services set out in the local offer. This work is led by the Public Health Department. Many of the children and young people with SEND will be known to both agencies and as the needs assessment is being refreshed, opportunities to use the intelligence to inform these plans have never been more timely. The approach and format of the JSNA is need to be revised and dataset sources revisited to ensure that the JSNA reflects accurately this cohort of children with special educational needs and disability, particularly those resident in Leicestershire.
  - c. Performance measures for services commissioned by the CCG are part of the routine contract management framework. The providers are held to account in respect of delivery and quality. Further discussion is needed to determine

whether or not these focus sufficiently on the needs of children with complex needs.

- d. Through the Better Care Together (BCT) Children and Families work stream, a joint commissioning approach is focussing on children and young people with learning difficulties (LD). However, the BCT agenda should take account of young adults aged 18 to 25 which, by definition are beyond the criteria for learning difficulties. This will ensure that there is join up across the system and reduce duplication of effort as well as reducing the number of times children young people and their families are consulted.
- e. The NHS Planning Guidance, Forward View into Action requires that by April 2016 CCG's must be in a position to offer a significant expansion of their Personal Health Budget (PHB) offer. In addition pursuant to the Bubb Report 2014) the planning guidance states that PHB's must be offered to people with learning disabilities in order to facilitate them living in the community and avoid out of area placements.  
(<http://www.england.nhs.uk/2014/11/26/learning-disabilities-action>)
- f. A specific Service Development and Improvement Plan (SDIP) has been agreed with Leicester Partnership Trust that will allow for the implementation of PHB's. There is no additional money to offer PHB's as it is a different way of utilising current resources. As such contractual changes need to underpin a system that allows money to be freed from existing contractual spend (e.g. LPT block contract) and offered to children, young people and families through PHB's. Progression of this scheme is being overseen by the Family, Young People and Children sub group.
- g. The Health and Wellbeing Board has strategies for consulting children and their families through Better Care Together and specific consultations by departments and key partners.

### **Ofsted inspection of SEND reform**

20. Edward Timpson MP, Children and Families Minister, has invited Ofsted to formally inspect local areas on their effectiveness in fulfilling their new duties. They will do this along with the Care Quality Commission (CQC) and a local authority officer. This request follows the advice provided to the Department for Education by Ofsted on local areas' preparation for the disability and special educational needs reforms within the Children and Families Act, 2014. The framework for this new inspection is currently being developed and Ofsted and CQC are currently speaking with a wide range of stakeholders. The intention is to focus on how local areas:
  - a. monitor improved outcomes and experiences for children, young people and their families
  - b. show how the SEND system is performing
  - c. hold partners to account
  - d. support self-improvement
21. The Health and Wellbeing Board should specifically note that this is an inspection of the 'local area'. The majority of statutory duties in relation to SEND rest predominantly with local authorities but now also with Clinical Commissioning Groups (CCGs). As the principal responsibility for delivery is held in local areas, OFSTED

plans to work with relevant partners and wider stakeholders to develop a set of agreed success measures to support local accountability. In particular, OFSTED intend to inspect local areas as to how they are:

- a. collecting feedback from children, young people and their families and using this to improve services and delivery;
- b. using data and intelligence to measure progress and success;
- c. working with other local areas to identify issues or trends and to learn from each other.

22. The proposed arrangements for the inspection are as follows:

- a. All local areas will be inspected, with an inspection interval of up to five years.
- b. Inspection teams will include a HMI, a CQC inspector and a local authority inspector.
- c. There will be re-inspection activity where this is appropriate.
- d. Inspectors will review available national data as part of their preparation, including within area inspection outcomes from CQC and Ofsted.
- e. The field work is likely to include discussions with elected members, key local area officers from health, education and social care, and meetings with leaders of early year settings, schools and colleges.
- f. Visits will be made to a range of providers. These visits will not inspect the provision but focus on the effectiveness of the area's arrangements.
- g. As appropriate the findings of the area inspection will contribute to other CQC and Ofsted inspection activity.

23. Although for details regarding the OFSTED inspection framework are yet to be finalised, it is clear that a successful inspection will depend upon the integrated approach and shared accountability of education, health and social care professionals. It will be important to ensure that representatives from all three professional groups attend training and briefings leading to the implementation of the framework.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416347/Accountability\\_Publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416347/Accountability_Publication.pdf)

### **Consultation/Patient and Public Involvement**

24. Listening to children and families is at the heart of SEND reform. There has been good engagement with the parents and carers forum, for example in co-producing the one page profile/SEND support plans that are the basis of an Education, Health and Care plan. The next step is to commission Leicestershire Family Voice for additional activity to enhance co-production and establish a network of SEND voluntary groups.

### **Resource Implications**

25. SEND reform is supported by an implementation grant totalling £1,598,477. This has been used to establish a project team and workforce development programme. The SEND reform brings with it additional burdens for which no additional resource has been identified in council or direct schools grant funding. The SEND project is timetabled to conclude on 31<sup>st</sup> March 2016, at which point these additional burdens will be part of business as normal operating across education social care and health services. The project team is now looking at a plan for transition to business as usual by March 2016.

26. The project has been successful in a number of areas becoming business as normal, particularly the conversion of statements of educational need to education, health and care plans. The local offer and SEND dataset are in a position to move to business as usual with resources allocated accordingly.

### **Conclusions/Recommendations**

27. SEND reform continues to progress well and there has been increased engagement between education, health and social care professionals over the key issues of joint commissioning and personal budgets. The Health and Wellbeing Board will need assurance that this progress continues to create the cultural shift which is fundamental to the success of reform and that operational and strategic plans by CCG's and the local authority give the priority to SEND reform as expected in the Children and Families Act 2014.

### **Background papers**

#### **SEND Code of Practice**

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

#### **DoH guidance Doc**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/357447/DH\\_HWB\\_children\\_s\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357447/DH_HWB_children_s_guidance.pdf)

<https://www.gov.uk/government/publications/send-guide-for-health-professionals>

#### **DfE guidance**

<https://www.gov.uk/government/publications/send-guide-for-social-care-professionals>

#### **OFSTED guidance**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416347/Accountability\\_Publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416347/Accountability_Publication.pdf)

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## Relevant Impact Assessments

### Equality and Human Rights Implications

28. This paper is for information and not requiring an impact assessment. However, the right of children and young adults with special educational needs and /or disability needs to be considered in full by commissioners to ensure their needs are taken into account when determining commissioning priorities and plans to ensure there is no direct or indirect discrimination.

### Crime and Disorder Implications

29. The incidence of people with a disability, particularly those with learning difficulties or mental health difficulties either being the victims of reported (and unreported crime is significantly higher than average. Equally, those with disabilities report that they experience barriers to accessing redress or support from the justice system.

### Environmental Implications

30. The SEND reform focus on preparing for adulthood and specifically 'independence' and 'relationships in the local community' should enable adults with disability to remain in their local community and therefore lower their carbon foot print.

### Partnership Working and associated issues

31. The legal framework requires local authorities and their partner commissioning bodies to develop joint arrangements for commissioning services to improve outcomes for 0 to 25-year-old children and young people who have special educational needs (SEN) or disabilities, including those with Education Health and Care (EHC) plans. Section 25 of the Children and Families Act 2014 places a duty on local authorities that should ensure integration between educational provision and training provision, health and social care provision, where this will promote wellbeing and improve the quality of provision for disabled young people and those with SEN. The Care Act 2014 requires local authorities to ensure co-operation between children's and adults' services to promote the integration of care and support with health services, so that young adults are not left without care and support as they make the transition from children's to adult social care. Local authorities and clinical commissioning groups **must** make joint commissioning arrangements for education, health and care provision for children and young people with SEN or disabilities (Section 26 of the Act). The term 'partners' refers to the local authority and its partner commissioning bodies across education, health and social care provision for children and young people with SEN or disabilities, including clinicians' commissioning arrangements, and NHS England for specialist health provision.