

SUBJECT: Responding to insufficiencies within the provider market for children and young people with complex needs

MEETING: Council

DATE: 27th January 2022

DIVISION/WARDS AFFECTED: All

1. PURPOSE:

To set out a proposal that allows Council to respond flexibly and promptly to emergency situations that arise to safeguard children and young people with very complex needs when there are no available 'looked after child' placements within the provider market.

2. RECOMMENDATIONS:

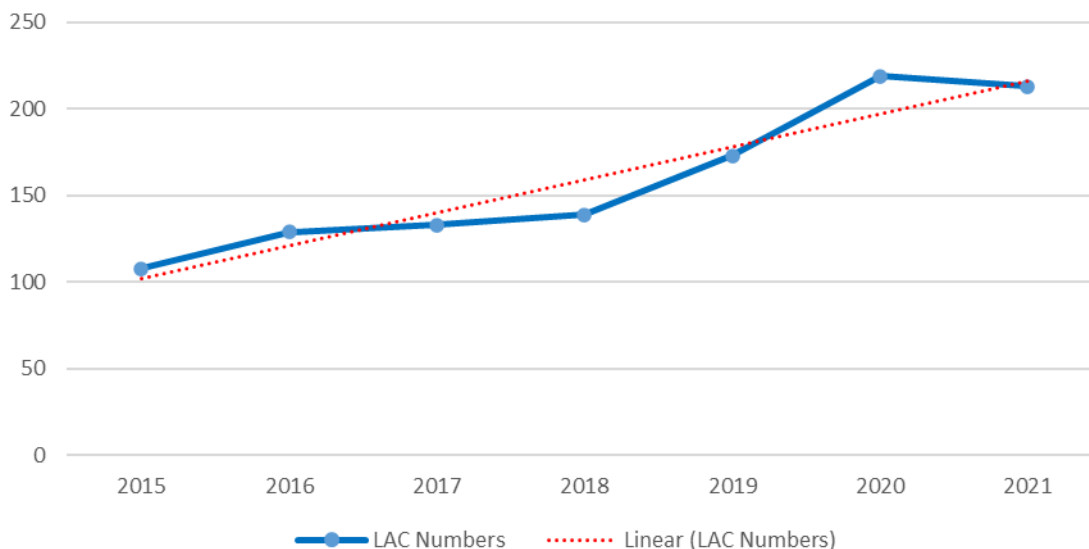
This report recommends that:

- 2.1 Council agrees to establish £2m borrowing headroom to enable specific property acquisition and remodelling to take place and where the Council is unable to identify suitable supply in the provider market for children and young people with very complex needs.
- 2.2 The Chief Officer Social Care and Health's delegated power to "secure" accommodation for children looked after when necessary includes the ability to purchase appropriate property or land following an appropriate business case and consultation with the Cabinet Member for Social Care, Safeguarding and Health.
- 2.2 Delegated authority is given to the Deputy Chief Executive / Chief Officer for Resources (as S151 officer of the Council), in consultation with the Cabinet Member for Resources, to consider business cases that look to draw on the borrowing headroom for the stated purpose.
- 2.3 The Council continues to work in partnership with Welsh Government, the Aneurin Bevan Health Board, Registered Social Landlords and other Local Authorities, such as to secure funding and/or suitable alternative provision that would look to mitigate or avoid the need for the borrowing headroom to be drawn upon.
- 2.4 The decision reports and business cases that support any properties acquisitions made and that fall within the circumstances outlined in this report are reported into the next available meeting of the Children and Young People's Select Committee.

3. KEY ISSUES:

Local context of Children Looked After

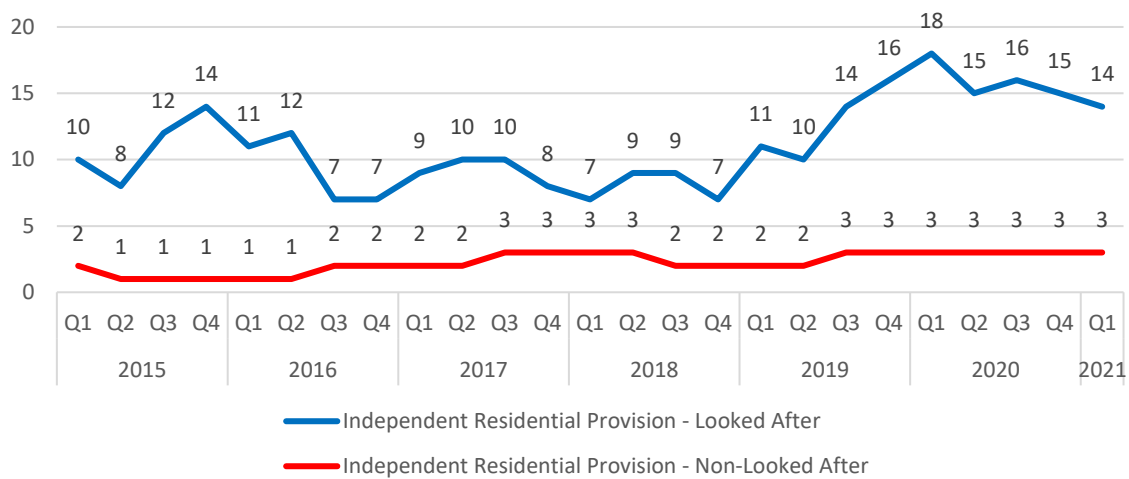
3.1 At the end of 2019/20 the number of Children Looked After stood at 213. It has since fallen to 205 at the end of month 9, remaining unchanged since month 6. However, new children have required high-cost residential placements, as opposed to those leaving which have been more in the lower cost fostering/kinship/family placements.



3.2 Within Monmouthshire there is a small number of children with very complex needs including issues associated with childhood trauma and attachment difficulties, Autistic Spectrum Disorders and Learning Disabilities, high risk or challenging behaviours requiring multi-agency involvement and a multi-disciplinary approach to their care and support over significant period. More often than not, children who enter residential placements often have a combination of such issues.

3.3 The graph below highlights the rise in residential placements amidst the aforementioned context.

Graph 20 – Number of Residential Placements over the period Mar 2015 – Mar 2021



Source: Monmouthshire Quarterly Baseline Data Returns

National context

- 3.4 The national shortage of placements for children who are looked after has become increasingly prominent within public and political discourse over recent months. For children and young people, particularly those with more complex or challenging needs, the impact of placement insufficiency can be significant and result in children and young people being placed outside of the Local Authority area and at some distance from their home and community causing disruption to their care, support and treatment arrangements.
- 3.5 Placement insufficiency is most keenly felt for children who require residential placements; for a small, but growing number of children, there is simply no placement available in the provider market. In these situations, Local Authorities across England and Wales, respond by putting in place bespoke ‘patch-up’ arrangements to try and meet the care and support needs of the individual child in the best way possible without the benefit of a regulated placement. This places Local Authorities in situations where they are operating outside of RISCA regulations. Care Inspectorate Wales, and in some cases Family Courts, then exert pressure on the Local Authority to take prompt actions to address the situation.

Issues within the Provider Market

- 3.6 Challenges within the provider market is a key contributing factor to placement insufficiency, particularly with regards to residential placements. Challenges within the provider market have arisen through a number of overlaying factors. These include:
- Local Authorities are often competing for placements, with many more children requiring placements than there are placements available. For border counties, including Monmouthshire, this includes competition from English authorities.
 - The market has not kept pace with the overall national increase in Children Looked After over recent years.
 - The increase in ‘solo’ placements being sought in response to the complex needs of individual young people when the market is more aligned to ‘standard’ residential children’s home placements.

- Loss of confidence within the provider market because of the Welsh Government commitment to eliminate profit from the care of children looked after.
- The many barriers to developing new services, and the time that it takes, are off-putting to providers.

3.7 Issues arising from reliance on the provider market across Wales are set out in the Welsh Government White Paper Rebalancing Care and Support issued in January 2021

3.8 Nationally, regionally, and locally steps are being taken to re-shape the market and address placement insufficiency: however, this will take time. Over the short to medium term, there is a high likelihood of the situation worsening, with Local Authorities increasingly struggling to find suitable placements for a small number of children with very complex needs, before the impact of any improvements is felt. Moreover, in many respects the current proposal is in fact part of this re-shaping process and any property that is acquired and registered as a children's residential home will then form part of our local provision for future planning; an approach that has already proved effective for one recent case.

Local Situation

3.9 To date this financial year the Council has been in a situation on three occasions where, despite extensive nationwide searches a placement could not be procured for an individual child. Operationally the service has responded along the following lines.

- i) Sourcing the most suitable available property to accommodate the young person through RSLs, private arrangements, or from within the council's own estate. This is often not ideal with challenges such as the wrong location or the length of time the accommodation can be occupied on a temporary basis for example.
- ii) Sourcing a provider agency or agencies who can meet the day to day care and support needs of the young person as best as possible without the benefit of a having a permanent residential staff team as per a regulated placement.
- iii) Providing intensive support, oversight and coordination of services into the placement in lieu of the permanent management structure that would be part of a regulated residential provision, with implications for staff time and resources from within the social work teams.
- iv) Simultaneously, continuing to conduct searches for an appropriate and available regulated placement from within the market.
- v) Ensuring that there are contingency plans in place so that, in the event that a regulated placement cannot be procured, the Local Authority is able to satisfy CIW and the Family Courts that appropriate alternative steps are being taken. Contingency planning involves sourcing and acquiring a suitable property aligned to the child's needs that can then be adapted to meet the regulatory requirements to become a registered residential children's home; and, securing a care provider that is able to meet the care and support needs of the individual child.

3.10 The Council is now at a point where a more robust funding mechanism needs to be in place and to ensure that where contingency plans need to be acted upon that this can be done in a responsive manner. Officers need to be able to access Council resources

quickly via a streamlined decision-making process as proposed. In such situations there is considerable operational pressure associated with ensuring that the child's needs are met safely and appropriately often within timescales that are defined by CIW and the Family Courts.

- 3.11 In addition to this, the nature of the property market within the Monmouthshire area is such that delay in making an offer can result in losing the property, particularly relevant in cases where the search criteria is limited by the bespoke needs of the young person.
- 3.12 Being able to access funds relatively quickly in order to acquire property in these situations will have potentially positive impact on both the council, service and young people and as outlined in the table below.

Positive impacts		
Council	Children's Services	Young People
Acquisition of property as potential future asset	Develop local provision for medium to longer term planning	Enabled to remain near home and community and with known services
Protects Council from reputational damage (CIW and Court)	Able to plan and develop service in quicker time	Less delay in being provided with stable placement because of quicker decision making
An acquired property is attractive to care providers as this removes the burden of acquisition from the registration process		

- 3.13 It is right and necessary to also highlight the associated risks with the local authority establishing its own provision as distinct from this being provided through commissioned arrangements or through other arm's length arrangements (e.g. via an arrangement with an RSL). Clearly in acquiring a property from which to deliver the necessary care and support the Council takes on the associated landlord responsibilities. Whilst there exists a risk of an empty property being held if no longer required for the child, the Council would still be left with a decision to either sell or retain the asset for future use.
- 3.14 Depending on whether a child is then supported through direct care provision or a care provider would influence where wider responsibilities fall. Though the Council has robust arrangements in place around service delivery and furthermore insurance cover arrangements in place to safeguard both staff and the Council.
- 3.14 This report recommends that Council now acts by establishing £2m of initial borrowing headroom to enable specific property acquisition and remodelling to take place and where the Council is unable to identify suitable supply in the provider market for children and young people with very complex needs.

3.15 Furthermore the report recommends that delegated authority is given to the Deputy Chief Executive / Chief Officer for Resources (as S151 officer of the Council), in consultation with the Cabinet Member for Social Care, Safeguarding and Health and the Cabinet Member for Resources, to consider business cases that look to draw on the borrowing headroom. This will only be in situations where all other options have been exhausted in securing registered provision that can safely meet the needs of an individual child or young person. The delegation is best placed with the S151 officer as this officer has regard under the constitution for both the security of public funds and of assets.

3.15 Officers will continue to work in partnership with Welsh Government, the Aneurin Bevan Health Board, Registered Social Landlords and other Local Authorities, such as to secure funding and/or suitable alternative provision that would like to mitigate or avoid the need for the borrowing headroom to be drawn upon. This will either be through existing established partnership arrangements or networks or directly as required.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):

4.1 The proposal supports the Council in its Safeguarding and Corporate Parenting responsibilities in its duty to provide safe and appropriate care to children who are looked after, and by helping to ensure that children remain close to their homes and communities.

4.2 By working in partnership with care providers the local authority is supporting local employment and development of a skilled local workforce as well as acquiring assets for that can be used in the longer term public interest.

4.3 An equality and future generations evaluation has been undertaken and is shown in appendix 1. The impact is seen as only having positive outcomes and as outlined in the valuation.

5. OPTIONS APPRAISAL

5.1 An option appraisal has been undertaken and can be summarised as followed:

- i) Go through a full council decision for each specific case - this would ensure that every capital decision is considered by elected members on its own merits and in relation to a specific individual situation. However, the disadvantages to this are that the timescales would carry the risk of causing delay in ensuring that the needs of individual children are met in accordance with relevant legislation. It is also likely to not offer the expediency needed to allow an offer to be secured on a property needing to be acquired.
- ii) Establish borrowing headroom and delegated authority to allow local authority provision to be developed expediently to address placement sufficiency – whilst this is something that is in progress at a regional level it is not something that can alleviate the current concerns quickly enough. This recommended option will in time provide greater resilience locally. But will also potentially and in time offer

greater resilience regionally and as we see children develop or move on from their existing placements.

- iii) Do nothing - essentially this would mean managing the emergency situation through 'patch-up' arrangements and rely on the market to eventually provide a placement without activating contingency plans. This would not require longer-term investment or borrowing by the Council. However, in 2 out of 3 of the recent cases even after many weeks of on-going searches the market has not provided a placement, and for this reason the 'do nothing' option is discounted.

5.2 The lack of unregistered placements for children is a UK-wide issue. Court cases have grown in frequency as Judges have more frequently been asked to use the inherent jurisdiction of the Court to deprive children of their liberty in identified locations other than registered placements. This issue has given rise to a growing challenge from the Courts to National Governments, the NHS and Local Authorities to find a solution to the issue and there has also been a legal case brought by the Good Law Project against, primarily, a number of named Local Authorities.

5.3 The way that the law is written and the way that case law has evolved brings the focus most intently on Local Authorities above all other partners, and this is reflected in the necessity for a nearby Local Authority to devote time and resource to a Supreme Court case to examine an issue related to this topic. To do nothing therefore raises the greatest legal, financial and reputational risk for MCC.

6. EVALUATION CRITERIA

6.1 This report looks to establish the funding, governance and decision-making framework that allows for accommodation to be secured through means of property acquisition. A key aspect of this framework is requiring business cases to be considered and approved before funding is drawn down. Each business case that considers the Council needing to establish its own local authority provision, whether the borrowing headroom needs to be accessed or not, will need to assess the underlying options as well as the suitability, risks and costs to the Council.

6.2 Furthermore, this proposal will be evaluated through ongoing monitoring of:

- i) The number of times within a financial year that the Council is required to respond to a situation where a placement cannot be procured for an individual child and where the council is providing accommodation and support to the child outside of RISCA regulations.
- ii) The number of times within such scenarios whereby officers need recourse to council spending or borrowing because officers have not been able to access funds elsewhere (i.e. Welsh Government or any other capital grants). This will be reported as required through established capital budget monitoring reports and process.

7. REASONS:

7.1 As outlined in the report to put in place arrangements that allows the Council to respond flexibly and promptly to emergency situations that arise to safeguard children and young

people with very complex needs when there are no available 'looked after child' placements within the provider market.

8. RESOURCE IMPLICATIONS:

- 8.1 This report looks to establish £2m of borrowing headroom to enable specific property acquisition and remodelling to take place and where the Council is unable to identify suitable supply in the provider market for children and young people with very complex needs. The borrowing will only be required and at a time when business cases are submitted and subsequently approved by the S151 officer of the Council and in line with the report's recommendations. The borrowing costs will be met from existing Children's Services budgets.
- 8.2 Whilst this report only deals with the borrowing headroom being created it is worth noting that associated costs against this borrowing will involve the cost of acquisition as well as any resultant costs to modify the property to make it fit for purpose. All associated running costs will be met from existing Children's Services budgets.
- 8.3 Any use of the borrowing will result in the acquisition and development of property. The Council's Landlord Services teams will look to provide ongoing support and to ensure that any assets acquired are well maintained and to ensure that asset values are retained such that best value is derived upon any subsequent disposal. However, it is worth noting that any accommodation being vacated might not automatically lead to disposal as it might be retained at that point for future use, either locally or regionally.
- 8.4 As per recommendation 3 of the Council will work in partnership with Welsh Government, the Aneurin Bevan Health Board, Registered Social Landlords and other Local Authorities, such as to secure funding and/or suitable alternative provision that would look to mitigate or avoid the need for the borrowing headroom to be drawn upon.
- 8.5 The Chief Officer for Social Care, Safeguarding and Health is able to act under powers within the Social Services and Well-Being (Wales) Act 2014 to ensure that suitable accommodation is secured to meet care needs. The business case required to justify any acquisition will need to outline an independent valuation being undertaken by a qualified valuer. As a special purchaser the Council will need to ascertain whether there are any circumstances that might require a premium to be paid. The justification for which would need to be included in any business case.
- 8.6 In summary this report looks to respond to matters that look to allow the Council to respond to flexibly and promptly to emergency situations that arise to safeguard children and young people with very complex needs when there are no available 'looked after child' placements within the provider market. However, it will also provide an affordable means by which the Council can deliver against care needs and when set against the cost that the Council would have had to face in securing provision through the provider market.

Points to note:

- Ability to acquire asset done under SWB Act but noting need for valuation. And to confirm process leading to business case and completion

9. CONSULTEES:

Cabinet
Senior Leadership Team
Estates and Property Services
Children Services Leadership Team

10. BACKGROUND PAPERS:

Appendix 1 – Equality and Future Generations Evaluation

11. AUTHOR:

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12. CONTACT DETAILS:

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